STATE OF NEW HAMPSHIRE

Petroleum Reimbursement Fund Program RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G

Guidance Manual

Policies, Procedures & Rules for Reimbursement



PREFACE

This publication provides information, guidance, forms and procedures for the New Hampshire Petroleum Reimbursement Fund Program, administered by the Oil Fund Disbursement Board ("Board"). The program includes four state dedicated funds established for purposes of providing financial assistance for the cleanup of petroleum contamination. Two funds provide assistance for gasoline, diesel, oil, and gasoline ether contamination (typically "MtBE"), one fund provides assistance for fuel oil contamination (primarily residential heating oil), and one fund provides assistance for motor oil contamination.

The document is organized in seven sections including: Program Overview; Key Provisions; Policies, Rules & Statutes; Achieving & Maintaining Facility Operational Compliance; Work Scope & Budget Approval; Reimbursable Corrective Action Costs; "Unit-Based" & "Project-Based" Costs; and How-To Obtain Fund Program Coverage & Submit Reimbursement Requests. The Appendix includes cost tables, forms, policy statements, rules, and statutes (all available as separate documents).

Five fact/guidance sheets appear at the end of the Appendix. These are: Quick Reference Guide; Overview of Facility Requirements; Reimbursement Submittal Checklist; Ten Common Reasons for Reimbursement Approval Delay; and Information Resources. Feel free to contact any of the individuals on the resource list if you have questions. In addition:

<u>Program Note</u>: Important information is highlighted throughout the document using this "Program Note" format.

This July 2007 N.H. Petroleum Reimbursement Fund Program Guidance Manual replaces the manual originally published in October 2003, updated in May 2006, and precursor Board documents including the Fund Program Description and Report on Unit-Based & Project-Based Costs.

The Board and Department of Environmental Services encourage the use of electronic media when submitting technical documents, work scopes, and reimbursement requests.

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I. OVERVIEW

New Hampshire Petroleum Reimbursement Fund Program

New Hampshire The Petroleum Reimbursement Fund Program is a financial assistance program for reimbursement of costs incurred for corrective action, third-party damages, public water supply gasoline ether monitoring, and consumer notification. In Hampshire. New gasoline ether contamination is typically methyl tertiarybutyl ether ("MtBE").

Program Note: "Corrective action" means activities performed in accordance with state statute or administrative rules to contain a petroleum discharge, or to remedv contamination. "Third-party damages" are a monetary obligation of a fund-eligible party based on a court-approved settlement or judgment in a civil action. Public water supply consumer notification and water quality monitoring are required under state statute and administrative rules when MtBE is found in the supply.

Owners of petroleum storage facilities, owners of properties identified as a source of gasoline ether contamination, and owners of public or private water supplies may participate in the program.

The reimbursement fund program is comprised of four separate dedicated funds authorized by state statute. These funds are; the Oil Discharge & Disposal Cleanup Fund under RSA 146-D, the Fuel Oil Discharge Cleanup Fund under RSA 146-E, the Motor Oil Discharge Cleanup Fund under RSA 146-F, and the Gasoline

Remediation & Elimination of Ethers Fund under RSA 146-G.

The RSA 146-D, E & F funds provide "excess insurance" coverage for owners of above ground petroleum storage ("AST") tank facilities. owners underground petroleum storage tank ("UST") facilities, owners of on-premiseuse fuel oil facilities, including residential properties, and certain property owners. Owners of these petroleum storage facilities may request reimbursement for corrective action and third-party damage incurred due to petroleum costs contamination. To qualify for state fund coverage, the facility owner must (1) demonstrate private insurance coverage is not available and (2) the facility must be operated in compliance with all applicable local, state and federal rules.

<u>Program Note</u>: Petroleum storage facilities include ASTs and USTs storing gasoline, diesel fuel, oil, fuel oil, or motor oil, and onpremise-use fuel oil facilities (typically at single-family homes).

The RSA 146-G fund is available to reimburse corrective action costs, public water supply monitoring costs and public water supply consumer notification costs incurred due to MtBE or other gasoline ether contamination. (Reimbursement is not available for third-party damage costs.) Eligible parties include owners of public or private water supplies affected by contamination, and owners of properties identified as a source of contamination. Gasoline handling and storage operations at such source

properties, if any, must be in compliance with all applicable local, state and federal rules for operation.

<u>Program Note</u>: Gasoline ether contamination source properties include motor vehicle salvage yards, dealerships, repair shops and other locations where gasoline is handled or stored.

The RSA 146-G fund does not function as excess insurance by statute. However, reimbursement is not available for costs paid by private insurance. Monies expended from this fund may be recoverable by the state under certain circumstances.

Administration

The program is administered by the Oil Fund Disbursement Board ("Board"), which is composed of twelve members representing the N.H. Legislature, the petroleum industry, state agencies and the general public. The Board is administratively attached to the New Hampshire Department of Environmental Services ("NHDES"), which performs program support services. The Board meets monthly to hear appeals, approve activity reports, and review policies and procedures. Reimbursements are subject to Board policies and the requirements of N.H. Administrative Rules Part Odb 400 effective November 22, 2005. Policy statements and rules may be found in the Appendix.

Petroleum Storage Facility & Contamination Source Site Owner Responsibilities

When a petroleum discharge occurs or contamination is discovered, corrective action is needed. Typically, this includes performing an investigation to determine the extent and magnitude of the problem, and developing a remedy plan. Quite often, "initial response action" is needed to abate imminent environmental or health hazards. This may include soil removal, "free product" removal or vapor abatement measures. NHDES is responsible for ensuring that surface waters, groundwater and public health are protected, by requiring the owner to perform investigation and remediation, and for managing the corrective action. A facility owner/operator and contamination source property owner has a duty to report when a discharge occurs and must undertake corrective action to meet state requirements.

Related Programs

Under RSA 146-E, homeowners who demonstrate financial need may receive up to \$1,500 in funds for repair or replacement of substandard fuel oil storage tank systems, and up to \$2,500 to remove a UST, to prevent a discharge. The "SAFETANK" program is described in various other guidance documents. Contact NHDES for details.

Where Do I Start & What Steps Do I Follow To Access The Funds?

Read Sections II, III, IV, V and VI for key fund program information and requirements. Follow the "How-To" procedures in Section VII if you need fund program resources. Contact NHDES personnel listed on the *N.H. Petroleum Reimbursement Fund Program Information Resources* guidance sheet for further assistance.

II. KEY PROVISIONS OF STATUTES, RULES & POLICIES

Corrective Action Liability

When a petroleum discharge occurs or contamination is discovered. NHDES personnel will determine who responsible for performing corrective action, and will issue a Letter of Responsibility. The reimbursement funds are available to the legal owner of a petroleum storage facility or contamination source property, and not others who are related to a discharge or contamination event. For example, a discharge from a fund-qualified petroleum storage facility due to a delivery company overfill, is not a covered occurrence. In such a case, the delivery company must complete corrective action with their own resources.

However, the RSA 146-G fund is available to a party that has suffered gasoline ether contamination, even if the discharge facility/source is not known.

<u>Program Note</u>: The fund-eligible party is a party who performs corrective action, and may be liable under state statute.

Qualifying Petroleum Storage Facilities & Gasoline Ether Contamination Source Properties

Qualifying petroleum storage facilities include "active facilities" (where one or more tanks are currently in-service), and "permanently closed facilities" (where all tanks and appurtenances are closed in accordance with NHDES rules) and a discharge has occurred and/or contamination is discovered.

Qualifying gasoline ether contamination source properties include any location where soil or groundwater contamination levels necessitate corrective action (For example, 13.0 parts-per-billion for MtBE).

Qualifying Public & Private Water Supplies

Qualifying public water supplies include those on an increased water qualify monitoring program due to gasoline ether contamination, have MtBE contamination levels necessitating consumer notification (>5.0 parts-per-billion), and/or have contamination levels necessitating corrective action (For example, 13.0 parts-per-billion for MtBE).

Qualifying private water supplies are those with contamination levels necessitating corrective action (Again, 13.0 parts-per-billion for MtBE).

Qualifying Persons Include: Petroleum Storage Facility Owners; Certain Property Owners; And Water Supply Owners

Qualifying petroleum storage facility owners include the current owner of an active or permanently closed facility, and the former owner of an active facility who incurred costs during their period of ownership. (Incurred costs, includes work contracted prior to transfer of facility ownership.) A qualifying owner is the person or entity that (1) has, or held, legal title to the facility and (2) whose name appears, or appeared, on the NHDES facility registration form, if applicable.

A qualified facility owner transferee is a person or entity that takes title to land where a permanently closed facility was located, and the former facility owner initiated corrective action.

Qualifying owners of land are those who own property where an on-premise-use fuel oil storage facility or motor oil storage facility is (or was) located. For example, the owner of a manufactured housing park with multiple fuel oil storage tanks.

<u>Program Note:</u> The fund program is available for certain qualifying facilities, properties, and water supplies, and is available to certain owners. The excess insurance funds are available if there is a qualifying petroleum storage facility. The gasoline ether fund is not available for other types of petroleum contamination.

Gasoline ether fund qualifying persons are: owners of contamination source properties, which may have gasoline storage or handling operations subject to facility compliance requirements, and owners of public and private water supplies affected by contamination.

Ownership Transfer & Fund Program Coverage

Fund program coverage is transferable to the purchaser of an active petroleum storage facility, gasoline ether contamination source property, public water supply or private water supply. Or, a qualified former owner may retain coverage after transfer, under the terms of a sales agreement. A copy of the sales agreement showing a continued liability for corrective action after transfer must be submitted. See Section VII.

At its discretion, a qualified permanently closed petroleum storage facility owner may transfer facility ownership and fund coverage to a purchaser of the property where the facility was located, or may retain coverage. A transfer of coverage may occur, *provided* the former facility owner initiated corrective action (as noted previously) and the facility was closed on or after the statutory dates shown below.

Statute	Facility Type	Closure
		Date
DCA 446 D	UST	7/1/88
RSA 146-D	AST	7/1/93
RSA 146-E	AST/On-Premise-Use	10/1/92
RSA 146-F	AST/UST	10/1/95

If the petroleum storage facility was closed before the above dates, fund coverage cannot be transferred. Therefore, the owner who initiated corrective action must retain coverage and continue the work after they sell the property.

There are no statutory limitations for transfer of gasoline ether contamination source properties and any associated gasoline storage/handling operations or facilities.

Qualifying Applicants

A qualified "applicant" is a person or firm hired by a qualified person, under a written contract, who performs corrective action, public water supply monitoring or consumer notification, and may seek reimbursement directly from the fund(s). For corrective action work, the applicant must agree to waive all claims against the owner for the services performed. (See:

N.H. Administrative Rule Odb 406.03 in the Appendix.) The written contract for services must be executed prior to start of the work, and the waiver of claims language for corrective action, must be included prior to reimbursement approval.

<u>Program Note:</u> Owners and applicants may not establish contracts that violate a statute or rule. An applicant may not balance-bill their client for non-reimbursable costs.

Petroleum Storage Facility Operating Requirements

To qualify for fund coverage, the facility must be in compliance with all applicable local, state and federal rules for facility operation and maintenance. General requirements for each facility type are as follows:

- Gasoline, diesel and oil UST facilities must be registered with NHDES and be in compliance with N.H. Administrative Rules Env-Wm 1401 and Env-Wm 1404.
- Gasoline, diesel and fuel oil AST facilities must be registered with NHDES, be in compliance with N.H. Administrative Rules Env-Wm 1402, meet state fire codes, and meet federal regulations for spill prevention control and countermeasures (40 CFR 112). The deadline for AST registration was July 1, 1996. (Contact NHDES regarding a late registration waiver if fund program assistance is needed.)
- On-premise-use fuel oil facilities installed on or after August 28, 1993, must meet all applicable local codes or

ordinances and National Fire Protection Association standard NFPA 31. All on-premise-use facilities must be equipped with a vent (overfill) alarm system. *Compliance must be achieved by July 1, 2010.* Owners of on-premise-use facilities regulated under Env-Wm 1401, or 1402 must demonstrate compliance with those rules.

<u>Program Note:</u> Owners of residential onpremise-use fuel oil facilities, who meet lowincome guidelines, may qualify for a \$1,500 grant to improve or replace a sub-standard system. Call NHDES for details.

 Motor oil or used motor oil storage facilities must be in compliance with Env-Wm 1401, 1404 or 1402 (if applicable), meet local codes, state fire codes and federal regulations for spill prevention, control and countermeasures.

Gasoline Ether Source Property Requirements

Other than AST and UST facilities storing gasoline, motor vehicle salvage yards, auto dealerships and repair shops are the most common sources of gasoline ether contamination. Gasoline handling and storage operations at such source properties must be in compliance with all applicable local, state and federal rules for operation. Principal requirements for these operations are included under the New Hampshire "Green Yards" Program for motor vehicle salvage yards, and N.H. Administrative Rules Env-Wg 401.

Achieving and maintaining compliance with operating requirements is explained further in Section III.

<u>Program Note</u>: A qualifying former owner cannot receive reimbursement if the current owner does not maintain compliance with operating requirements.

Fund Program Projects & Other Contamination

A property or "site" may include a mix of fund-eligible petroleum contamination, and contamination from other sources. Additional stand-alone or incremental corrective action costs may be incurred by a qualified person due to other contaminants. Such costs are not reimbursable and must be accounted for separately.

Private Insurance Coverage

The RSA 146-D, E & F funds provide "excess insurance" coverage for owners of AST facilities, owners of UST facilities. and owners of on-premise-use fuel oil facilities. (The RSA 146-G fund is not an excess insurance fund by statute. However, costs paid by private insurance are not reimbursable.) Facility owners must file a claim with their private insurance carrier before requesting state fund assistance. A private insurance claim must specifically request if coverage is available for damages to land owned, "first-party coverage", and for damages to waters of the state and/or abutting landowners, i.e., "third-party damage/liability coverage". The owner submit must of а CODV the correspondence from their insurance

company that details available coverage. If there is no private insurance policy in force, a notarized letter stating so must be provided. The state fund(s) is available when there is no private insurance, no coverage, or only limited coverage.

<u>Program Note</u>: The fund program provides excess insurance coverage for a petroleum storage facility owner. It does not provide liability coverage for corrective action service providers.

Under New Hampshire law, oil discharge impacts to groundwater or surface water are deemed to be damages to the state. The Board presumes water damage corrective action costs are covered under (most) standard homeowner insurance policies. Such policies are typically issued under Insurance Services Office guidelines, and include so-called, "Section - Liability Coverage" provisions. However, if a private insurer will not automatically provide third-party liability coverage, or will not provide a third-party coverage determination, the Board may reimburse the corrective action costs under a rule waiver. Contact NHDES program staff for more information.

<u>Program Note:</u> In cases of non-responsive private insurers, a waiver of Board rules will be required to receive reimbursement. The Board will reserve its rights to take legal action to recover reimbursed costs.

Petroleum Discharges & Contamination Discovery

The fund program is available for reimbursement of costs that may result from operational discharges, or from

contamination found at a facility or site. However, costs associated with the discovery of contamination are not reimbursable.

<u>Program Note:</u> Discovery-related costs are not reimbursable.

Fund Program Coverage Limits & "Deductibles"

The petroleum storage facility funds are available for reimbursement of corrective action costs and third-party damage costs. The gasoline ether fund is available for reimbursement of corrective action costs, public water supply monitoring costs and consumer notification costs. It is not available for reimbursement of third-party damage costs. Each fund is available for costs incurred after certain dates provided in the statutes, or the date of discharge or contamination discovery, whichever is later.

Owners of petroleum storage facilities must cover initial corrective action costs out-of-pocket (i.e., a deductible), based on the type of facility and number of facilities owned. Deductibles range from \$100 for each on-premise-use fuel oil storage facility, regardless of the number owned, to \$30,000 for each AST or UST gasoline, diesel, fuel oil, or motor oil storage facility, if 20 or more are owned. There is no deductible for owners of gasoline ether contamination source properties.

The deductible is *subtracted* from the amount of reimbursement for reimbursement requests submitted by the owner. The deductible is *billed to the owner* for reimbursement requests

submitted by applicant an deductible is not already met). Deductibles are determined by counting the number of facilities registered with NHDES in the name of the owner filing a reimbursement request. The facility count includes all active and permanently closed facilities where a discharge occurred and all active facilities where fund assistance may be needed in the future.

<u>Program Note:</u> There are two "deductible" schedules that apply based on the date of discharge discovery, before or after 7/1/95. Deductibles cannot be waived or forgiven.

Fund program coverage limits and deductibles are shown in the *Overview of "Facility" Requirements* table.

Usual & Customary Market Rates, Or Costs

The Board publishes usual and customary market rates or costs for corrective action work based on a variety of "Unit-Based Cost" and "Project-Based Cost" services. See Section VI for a description, and the cost tables in the Appendix.

Work Scope & Budget Approval

With the exception of *emergency services*, all corrective action work must be preapproved by NHDES for both scope and budget. See Section IV for work scope and budget approval requirements.

Corrective Action Performance Standards

Reimbursement requests may not be processed for payment until corrective action is completed in accordance with NHDES requirements, including appropriate reporting.

"Pay-for-Performance" contracts and for work-in-progress payment are permissible, whereby NHDES, the owner and the corrective action service provider(s) have agreed on a payment schedule for completed work and the submittal of certain interim reports.

Reimbursable Costs

Reimbursable corrective action costs incurred by petroleum storage facility or gasoline ether contamination source property owners may include work authorized by NHDES under statute or rule to contain a discharge and complete contamination cleanup. This may be one or more "phases" of work such as: Initial Response Action (including Emergency Services), Site Investigation, Remedial Plan, Remedial Action Plan Implementation, permit application preparation, NHDES permit and local corrective action fees, and Groundwater Monitoring.

Owners of public and private water supplies may be reimbursed for certain corrective action costs due to gasoline ether contamination, even if the contamination source is not known. Incurred corrective action costs are reimbursable at the not-to-exceed usual and customary market rates or costs, published by the Board.

Public water supply (gasoline etherrelated) consumer notification and water quality monitoring costs are reimbursable at reasonable market-based costs. Reimbursable third-party damage costs include court-ordered damages for bodily injury or property damage claims. Contact NHDES for specific guidance on reporting a third-party demand, filing a copy of a writ or petition, and other information.

See Sections V and VI for reimbursable cost information.

Reimbursement Request Submittals

Petroleum storage facility owners and owners of gasoline ether contamination source properties may submit a reimbursement request upon completion of corrective action as directed by NHDES.

Public water supply owners may submit a reimbursement request upon completion of consumer notification or water quality monitoring.

See Section VII for an explanation of "How-To" secure fund eligibility and submit a reimbursement request.

<u>Program Note:</u> Reimbursement requests and corrective action reports should be submitted concurrently to avoid payment delays. Electronic or web-based submittal is encouraged, and preferred.

III. ACHIEVING & MAINTAINING FACILITY COMPLIANCE

When Is Facility Compliance Required?

The fund program statutes and rules include requirements that petroleum storage facilities, and certain activities at gasoline ether contamination source properties, be operated/conducted in compliance with applicable local, state and federal standards. If a facility/property is in compliance, fund coverage is automatic in the event of a discharge or contamination discovery.

There are no facility compliance requirements for owners of public and private water supplies seeking reimbursement for gasoline ether contamination costs. where the contamination source is not known.

What Is Facility Compliance & How Do I Achieve It?

A "facility" may be an on-premise-use fuel oil tank system at a private residence, commercial ASTs or USTs storing gasoline, diesel fuel, oil, fuel oil, or motor oil, or various gasoline handling and storage operations at, e.g., a motor vehicle salvage yard.

The key purpose of facility operational compliance requirements is to prevent discharges and resultant contamination. Achieving and then maintaining compliance is critical to discharge prevention. Facility owners should contact appropriate NHDES program staff listed on the Information Resources table to obtain compliance assistance/guidance. Owners should employ a qualified tank

system installer, consultant, contractor or other professional to review their facility compliance status, and correct any deficiencies.

Gasoline, diesel fuel and oil UST facilities must be registered with NHDES and be in compliance with N.H. Administrative Rules Fnv-Wm 1401 and Env-Wm 1404. Gasoline, diesel fuel and fuel oil AST facilities must be registered with NHDES, be in compliance with N.H. Administrative Rules Env-Wm 1402, meet state fire codes, and meet federal regulations for prevention control and spill countermeasures (40 CFR 112). The deadline for registration of AST facilities was July 1, 1996. If fund program assistance is needed for a non-registered AST facility, a "late registration waiver" will be required. Contact NHDES for more information.

Owners of on-premise-use fuel oil UST and AST facilities, regulated under Env-Wm 1401, or 1402, must demonstrate compliance with those rules. By statute, on-premise-use fuel oil facilities installed on or after August 28, 1993, must meet all applicable local codes or ordinances and National Fire Protection Association standard NFPA 31. All on-premise-use facilities must be equipped with a vent (overfill) alarm system. Compliance with requirements statutory must achieved by July 1, 2010. Thereafter, fund coverage will not be automatic, and the owner must obtain a waiver from the Board.

<u>Program Note:</u> Owners of residential onpremise-use fuel oil facilities, who meet lowincome guidelines, may qualify for a \$1,500 grant to improve or replace a sub-standard system. Call NHDES for details.

Motor oil or used motor oil storage facilities must be in compliance with Env-Wm 1401, 1404 or 1402 (if applicable), meet local codes, state fire codes, and federal regulations for spill prevention, control and countermeasures.

Typical gasoline ether contamination source properties are motor vehicle salvage yards, auto dealerships and repair shops. At such properties, "facility operations" may encompass various gasoline handling and storage activities conducted at the site. This may include: ASTs and USTs, small fuel storage containers and storage areas, fuel transfer devices, and motor vehicle storage, repair and dismantling activities (and associated At these locations. structures). operational compliance determinations may involve various NHDES program interests. rules. and personnel. Therefore, "compliance" for purposes of fund eligibility may mean compliance was met, or NHDES approved a compliance schedule for certain activities.

Active Facility Compliance Inspections

NHDES personnel perform field inspections of active AST and UST petroleum storage facilities throughout the year. Facility owners should expect to be contacted that an inspection is due, and should provide assistance as necessary. Periodic inspections and compliance record keeping are valuable in preventing

discharges and providing early detection to minimize the spread of contamination. NHDES has identified numerous facilities, already in the fund program, where second discharges have occurred. In some cases, new discharges are the direct result of failure to perform certain facility compliance activities. Early detection opportunities are lost due to failure to maintain adequate records.

Compliance & Fund Eligibility

When а discharge occurs, or contamination is discovered. and corrective action is initiated. NHDES personnel will review compliance records and notify the facility owner of their fund-If the facility eligibility status. permanently closed and a proper closure report was provided, if applicable, the owner is eligible for the fund program. If the facility is active NHDES personnel will perform an inspection and any compliance deficiencies must be corrected before reimbursement requests can (Or, for gasoline ether processed. contamination source properties, NHDES may approve a compliance schedule.) Periodic compliance reviews will be performed during the corrective action process. The facility owner must certify that compliance will be maintained by signing the Owner's Liability Statement and Affirmation, on the Request For Reimbursement Authorization form included in the Appendix.

<u>Program Note:</u> Failure to achieve and maintain operational compliance after the first discharge may result in permanent loss of coverage for future discharges.

IV. WORK SCOPE & BUDGET APPROVAL

Corrective Action "Phases"

Under its rules and guidelines, NHDES generally categorizes corrective action work by phase for purposes of consistent identification, smooth workflow and cost control. These phases are: Initial Response Action (including Emergency Services), Initial Site Characterization, Free Product Removal, Site Investigation, Remedial Action Plan, Remedial Action Plan Implementation and Groundwater Monitoring. Groundwater monitoring is typically performed under a NHDESissued site groundwater management permit, as required by statute. Public and private water supply corrective action costs may fall under the above general phase categories, or may be other specific work.

Usual & Customary Rates, Or Costs Actual Cost

Reimbursement for corrective action is available at the not-to-exceed usual and customary market rate or cost for professional and contractor services. The Board publishes rate and cost information for a variety of Unit-Based Cost and Project-Based Cost corrective action services. These are described in Section VI, and shown in tables in the Appendix. The cost categories and tables are periodically updated based on changes in market conditions.

Reimbursement for public water supply gasoline ether consumer notification and water quality monitoring is available at a reasonable market-based cost.

When Is Work Scope Approval Required?

With the exception of emergency services, all corrective action work must be preapproved by NHDES for both scope and budget. (Emergency services should be undertaken with NHDES knowledge and concurrence.)

In the event of a petroleum discharge or contamination discovery, qualifying persons (See Section II for a description) must retain a contractor and/or consultant to complete work as directed by NHDES. This may require preparation submittal of a work scope and budget for NHDES approval using Unit-Based Costs, and/or adherence to one of the Project-Based Cost work scope categories. Certain costs incurred while performing corrective action such as utility costs, local police detail and permit fees, are not market-based and thus not subject to preapproval.

Two forms are available for use in submitting a work scope and budget, or a work scope change order, and are included in the Appendix. (Contact NHDES regarding use of the forms and see additional guidance in this Section.)

Pre-approval is *not* required for public water supply gasoline ether consumer notification and water quality monitoring. However, public water supply owners intending to seek reimbursement for such costs should contact Talcott Hubbard, P.E. at (603) 271-2014 or David Reid, P.G., at (603) 271-3431.

<u>Program Note:</u> Work scope and budget preapproval is required for all corrective action work, except emergency services. Preapproval is not required for public water supply consumer notification or water quality monitoring.

On-Premise-Use Facilities

For Initial Response Action work at onpremise-use fuel ("OPUF") oil facilities, including private homes, involving the excavation, transportation and disposal of contaminated soil, an additional special form is available for projects that can be completed in 5 days or less. At the start of an OPUF corrective action project, NHDES personnel will determine whether the 5-Day form is appropriate, in consultation with the service provider(s). A copy of this form is also in the Appendix.

Work Scope Approval Process

Because of the specialized nature of corrective action services, different NHDES personnel are responsible for approval and oversight of work as a project moves from one phase to the next. Qualifying persons should contact appropriate NHDES program staff listed on the Information Resources table to obtain assistance.

Corrective action work performed under the fund program is typically conducted on a time & materials basis, subject to the reimbursable cost guidelines provided in Sections V & VI. Whenever possible, NHDES personnel will request that work be performed following a standard, Project-Based Cost scope, as this

facilitates expeditious corrective action, minimizes administrative time and simplifies the reimbursement process. However, for complex projects, and public/private water supply projects, NHDES may request that a project-specific work scope and budget be prepared.

Competitive Pricing, Contract & Performance Requirements

Certain projects, as determined NHDES, will involve competitive pricing (i.e. bidding) for implementation of a remedial action plan. The overseeing consultant and the construction contractor performing remedial plan implementation (RPI) work must adhere to standard engineered-construction practices, under American Society of Civil Engineers guidelines. For some RPI work, "Pay-for-Performance (PfP)" contracts may be used, negotiated among NHDES, the corrective action provider and the owner. A PfP contract agreement is based on the service provider meeting specific overall performance standards, achieving specific performance milestones as the work progresses, which may or may not include a performance time schedule.

A qualified applicant performing corrective action, public water supply monitoring or consumer notification may seek direct reimbursement from the fund(s). RPI contracts may be structured so the overseeing consultant or engineer is an applicant for their work, and the implementation contractor is an applicant for their work. However, applicant

contracts are not permitted for individual subcontractors. For corrective action work, the applicant must agree to waive all claims against the owner for the services performed. All contracts for services must be executed prior to start of the work.

Program Note: Certain corrective action must be bid. Applicant (i.e. direct-pay) contracts are permitted for the consultant/engineer and/or the contractor. Corrective action must be conducted using a cost-effective approach and performance standards must be met to qualify for reimbursement.

Reimbursement from the fund program is conditional meeting NHDESon established performance standards. **NHDES** Typically, will establish performance standards at the time of work scope approval. If corrective action will involve installation of "capital equipment", a cost comparison of leasing purchasing the equipment must be completed prior to installation. Capital equipment is any electronic, chemical, mechanical or structural equipment installed to perform contamination source removal or treatment, and has a long-term life greater than 2 years, and is valued at \$10,000 or more. The chosen option, lease vs. purchase, must represent the lowest cost over the estimated duration of the project.

Public & Private Water Supplies

Owners of qualifying public and private water supplies (See Section II) may be reimbursed for the costs to remedy gasoline ether contamination, where the contamination source is not known.

For owners of private water supply wells, reimbursement is available for connection to a public water system at or near the property boundary, or replacement of the contaminated well. Such owners may submit a project-specific work scope and budget for connection to a public water system, or for (1) investigating the feasibility of installing a replacement well and (2) well installation, if feasible.

For owners of public water supplies, available reimbursement is construction of a distribution system extension (to serve contaminated private properties), construction of new treatment processes, water supply wells distribution systems, replacement of a water supply well, or connection to another public water system. Due to the potential complexity of such projects, the owner must first submit a work scope and budget to perform a detailed feasibility Feasibility study costs are studv. reimbursable whether or not a project proceeds further.

Owners of public and private water supplies should contact Talcott Hubbard, P.E. at (603) 271-2014.

How Is Corrective Action Or Other Work Implemented?

If NHDES requests corrective action work conforming to the Project-Based Cost categories described in Section VI, the consultant or contractor may proceed without submitting a work scope and budget.

If the proposed corrective action does not conform to the Project-Based Cost

categories, or involves a public or private water supply, a project-specific work scope and budget must be submitted for review and approval prior to performing the work. This may include complex site investigations, Initial Response Action, Remedial Action Plan, and Remedial Plan Implementation work.

As noted previously, pre-approval is *not* required for public water supply gasoline ether consumer notification and water quality monitoring. Public water supply owners intending to seek reimbursement for such costs should contact NHDES for guidance.

Using Work Scope & Budget Forms

Work Scope Authorization: The Work Scope Authorization form is used to submit a time and materials proposed and budget for performing corrective action when the Project-Based Cost categories described herein do not apply, but a highly detailed work scope is not necessary. This would include, but not be limited to, Initial Response Action and simple remedial soil excavations not subject to bidding. This form is not appropriate for complex work, such as remedial action plan preparation and implementation. In such cases, a "formal work scope and budget" must be submitted which describes the work to be performed, in detail. Contact NHDES for an example of a formal work scope and budget.

<u>Change Order Form:</u> The Change Order form is used to submit a request to modify the scope of a Project-Based Cost category described herein, or other

approved work scope, due to a change in conditions encountered after the work is initiated. In certain cases NHDES may provide verbal and/or email approval for a change order, provided a written Change Order form is submitted within 48 hours.

On-Premise-Use Facility Work Scope Authorization: The OPUF 5-Day Work Scope Authorization form is used by NHDES to approve soil excavations and restorations when the time required to complete the excavation effort is 5 days or less

Engineer Certification of Contractor Quantities: The certification form is for use to support a contractor reimbursement claim for remedial plan implementation. Use of this form allows reimbursement of a contractor payment request when the full implementation report is not complete.

<u>Program Note:</u> Forms are available for submittal of a work scope and budget and certification of contactor work. See the Appendix.

Overtime

Overall project cost savings may be realized by incorporating overtime for time and materials work, or by adding hours to reduce the number of days for an OPUF 5-Day approval. Overtime is typically appropriate for projects with long travel distances, versus re-mobilizing to the site, but may be used on any project to reduce overall costs. If cost savings are marginal, a cost comparison may be needed to help NHDES in reviewing the work scope and budget. If cost savings

are obvious, overtime rates may be included in a proposed work scope and budget, with a footnote/explanation noting that overtime was included and the approximate project cost savings.

What Happens When A Work Scope & Budget Is Submitted?

If a work scope and budget ("SOW") submittal does not provide sufficient descriptive or cost information, it may be returned to the sender, or held until it is completed. Typically, NHDES personnel will telephone to request additional information to complete a submittal. If complete, the SOW is logged into a database for tracking and reporting and assigned to a project manager for review. If NHDES records indicate the petroleum storage facility or gasoline ether source property has operational compliance issues, the owner may be notified that an inspection is needed.

How Do I Prepare & Submit A Work Scope & Budget?

NHDES recommends that corrective action service providers prepare and submit work scopes and budgets, vs. the owner. Service providers with fund program experience are already familiar with NHDES corrective action criteria and approval procedures. In addition, work scope and budget preparation costs are reimbursable.

This recommendation also applies for corrective action work that will be performed by the owner. The overseeing consultant or contractor is best qualified to

prepare the submittal. Owners should contact appropriate NHDES program staff listed on the Information Resources table for SOW assistance/guidance.

V. REIMBURSABLE COSTS

Reimbursable Corrective Action Costs

Reimbursable corrective action costs are those costs incurred by qualifying persons (See Section II for a description), in responding to a NHDES work request. As noted in the previous section, corrective action work is identified by phase and must be pre-approved by NHDES for both scope and budget. (Emergency corrective action work may be approved without a budget.) The Board has published not-toexceed usual and customary rates or costs for a variety of Unit-Based Cost and Project-Based Cost corrective action services that are detailed in Section VI. Reimbursable corrective action costs include:

- Management of gasoline ether, virgin oil and waste oil petroleum contaminated soils in accordance with NHDES regulations;
- Services associated with temporary surface and groundwater discharge permits that are not related to closure or installation of a fund-eligible facility;
- Corrective action in response to a discharge or contamination performed in accordance with NHDES regulations and policies; and
- > Fees for corrective action permits.

Corrective Action Cost Limitations

Under Odb 400, certain reimbursable cost limitations apply as follows:

- For corrective action performed by a qualifying person, reimbursable costs are limited to actual costs based on employee pay rates, cost of benefits and equipment operating expenses;
- Reimbursement cannot exceed actual costs, paid or incurred less any discounts received:
- Inspection fees, or access fees charged by property owners, are not reimbursable:
- Legal costs are not reimbursable;
- Administrative, fiduciary management or supervisory costs are not reimbursable;
- Interest charges on unpaid invoices are not reimbursable;
- Civil penalties or state double cost recovery charges are not reimbursable;
- Costs associated with the discovery of a discharge or contamination, are not reimbursable;
- Costs paid by insurance are not reimbursable;
- Costs in excess of approved budgets are not reimbursable:
- For bid-based services reimbursement is limited to bid and Change Order items measured or certified by the Engineer; and
- NHDES performance standards must be achieved.

Reimbursable Public Water Supply Costs

In addition to corrective action costs. owners of qualifying public water supplies (See Section II) may be reimbursed for consumer notification and water quality monitoring. The Board has not published specific rates or costs for this work. However, some corrective action rates are applicable, e.g., Unit-Based Costs for laboratory analysis. The Board expects costs for notification and water quality monitoring to be reasonable and marketrepresentative. Public water supply owners intending to seek reimbursement for such costs should contact Talcott Hubbard, P.E. at (603) 271-2014 or David Reid, P.G., at (603) 271-3431.

Property Damage Restoration

When a release or spill of stored petroleum product occurs, reimbursable and non-reimbursable property damage In general, restoration of may result. damages resulting from performance of corrective action is reimbursable, provided there was no contractor error/omission covered under their company liability insurance. Restoration of damages directly resulting from the release or spill of petroleum, or otherwise not related to performing corrective action, is not reimbursable unless in the context of a legal action. (Under Odb 400, corrective action is distinguished from third-party damage costs in legal actions.) addition to direct damages, loss of property use or disruption of business activities may occur while corrective action is performed. These are also nonreimbursable costs under the general administrative, fiduciary management or supervisory cost limitations provided in Odb 400.

A fuel oil release from a basement storage tank is a typical situation where non-reimbursable reimbursable and damages can occur. Fuel oil releases may saturate the premises and affect: (1) structural features including; load-bearing framing/walls, partition walls, stairways, foundations, basement fill materials and concrete floor slabs, (2) architectural features including; flooring, carpeting, special decorative trim and paneling, and (3) personal belongings including books, clothing, and family memorabilia.

Due to hazardous vapors, corrective action may involve removal and proper disposal of all oil-saturated materials including structural features, architectural features and personal belongings. Reimbursable corrective action restoration includes repair of structural features. if removed or damaged for vapor control or corrective action work. other Reimbursement is not available for restoration of oil-saturated architectural features and replacement of personal belongings. This is done at the owner's discretion and cost. In some cases. private insurance may cover these personal property losses.

<u>Program Note:</u> In-kind restoration of corrective action damages is often not possible or warranted. Reimbursement is not available for restoration of architectural features and personal belongings impacted by a petroleum release.

Fund-eligible parties should understand reimbursement is only available for cleanup costs. The state funds do not comprehensive provide damage restoration coverage that may available through private insurance. Whenever possible, NHDES will follow a corrective action approach that avoids structural features and otherwise minimizes property damages. Assessment of damages determination of a reasonable restoration cost is often difficult. In-kind repair or replacement following corrective action is possible or warranted, often not particularly when aesthetic features such as landscaping are involved.

Reimbursable Third-Party Damage Costs

Reimbursement for third-party damages is limited to those defined in the Board rules, and is subject to specific procedural requirements. A petroleum storage facility owner must follow the procedural requirements in the event of service of a (legal) writ or petition. Owners should contact NHDES immediately upon service, and must provide written notice to the Board within 30 days of service.

VI. UNIT-BASED & PROJECT-BASED COSTS

Unit-Based & Project-Based Costs

Usual and customary *not-to-exceed* corrective action service costs are identified from market data obtained by NHDES, with input from contractors and consultants. This data is published by the Board categorized as "Unit-Based Costs" or "Project-Based Costs" and is periodically updated. Service providers interested in performing corrective action in New Hampshire are encouraged to provide rate and cost information upon request.

The published cost information is used to facilitate corrective action pre-approval, performance, and subsequent reimbursement request processing. The cost data published herein represents the typical upper limits for services that are not bid. Therefore, the cost data is not applicable for bid-based implementation of a NHDES-approved Remedial Action Plan with the exception of preparation of soil excavation bid specifications and bid administration.

Under Odb 407.10(a), reimbursement for incurred corrective action costs is limited to actual invoiced costs, paid or incurred less any discounts received. For work budget scope and proposals reimbursement requests, where costs are at or below those published herein, the costs are presumed reimbursable unless otherwise disqualified. Any submitted costs exceeding those published herein are subject to reduction to the published rates or costs.

In general, all proposed corrective actions subject to Odb 400, must conform to the Unit-Based Costs or Project-Based Cost categories described herein. Nonconforming corrective action costs are subject to pre-approval by NHDES, in consideration of a written justification that (1) describes the need for the work and (2) includes data that demonstrates the proposed items or costs represent a usual and customary rate. Certain incurred while performing corrective action such as utility costs, local police detail and permit fees, are not market-based and thus are not subject to pre-approval. In order to verify actual cost, NHDES may request copies of invoices or other information from service providers.

Four tables are included in the Appendix that list current Unit-Based Costs and Project-Based Costs. The cost tables are periodically updated as circumstances warrant.

Using Cost Data

Unit-Based Costs: Unit-Based Costs are a unit of labor, service, activity, or product delivered for a set cost. Examples include laboratory analytical tests or an hourly rate for a specific piece of equipment such as a backhoe. It may not be reasonable in all cases to apply Unit-Based Costs over the entire duration of the activity being performed. Therefore. NHDES reserves the right to consider "economy of scale" in reviewing work scopes, and may require negotiation of costs, or bidding, for a specific project. Many of the

reimbursement fund program Unit-Based Costs are equivalent to rates in NHDES statewide *Initial Response Action and Planned Remediation* contracts

Project-Based Costs: A Project-Based Cost is the aggregate cost for the completion of a specific work category. The Project-Based Costs describe a level of effort required to perform a certain category of work. Examples of Project-Based Costs include, Site Investigation, Initial Site Characterization, and Groundwater Monitoring.

Applicability, Recommended Billing Practices & Cost Limitations

Ancillary Costs:

Many small items should be considered as overhead and inclusive to the billing rates of personnel. These ancillary costs include, but are not limited to: telephone, faxes, postage, computers, software, cellular phones, cameras, and miscellaneous non-powered hand tools. Ancillary costs are considered inclusive to the Project-Based Cost budgets.

Equipment Downtime, Storage, Repair or Replacement:

Excess charges for equipment downtime, storage, or the cost to repair or replace equipment that is damaged, lost or stolen due to negligence or vandalism are not reimbursable.

Equipment Rental or Purchase:

The decision to rent or purchase equipment should be based on the option that provides the lowest overall cost for the duration of the project. Generally these considerations apply to "Capital"

Equipment" as defined in the rules. It is recognized that rental charges reflect purchase cost, maintenance, depreciation, handling and reasonable profit. However, in some instances, the Board and NHDES may determine that proposed or billed rental charges are not appropriate given acquisition costs and market considerations.

Field Supplies:

Several small items are used during cleanup activities. For billing ease, composite costs for such items are typically billed at \$25 per day, unless an item is listed in the Unit-Based Cost tables.

Fuel Cost Adjustment:

Service providers seeking compensation for increases in fuel costs, must track fuel usage for a project and calculate the cost differential from the base fuel cost, effective at the time of Unit-Based Cost publication. Fuel cost information for New England region PADD 1A is available from the U.S. Department of Energy Information Agency at:

http://tonto.eia.doe.gov/dnav/pet/pet_pri_g nd_a_epm0_pte_cpgal_m.htm

Health & Safety:

Level D is adequate for almost all activities at petroleum sites in New Hampshire. Levels A, B and C are rarely used. However, costs for higher levels of protective equipment are reimbursable provided NHDES agrees it is required to adequately protect the health and safety of workers.

<u>Limitation on Reimbursement for Project</u> Transition Costs:

Reimbursement for project transition costs shall be limited to one consultant transition per project, unless NHDES grants additional transition approvals in response to a written request.

Limitation on Senior Personnel – 15%:

In general, the total hours for senior level oversight should not exceed 15% of the total project labor hours. Senior level personnel are typically defined as Senior Project Engineers/Geologists/Managers, Supervisors and Principals.

Markup of Service Costs:

A service provider may charge up to 15% of the actual cost of subcontracted services, paid or incurred less any discounts received, to cover projectspecific administration and insurance costs. Subcontracted services mav include laboratory analysis. drilling. disposal of contaminated materials, or other services performed under a written A service provider may subcontract. receive direct reimbursement as an applicant, by contracting with a fundeligible party.

<u>Program Note:</u> For large or special projects, the Board and NHDES reserve the right to negotiate markup multipliers. A service provider may only markup work that is usual and customary for their type of business.

A service provider may charge up to 10% of the actual cost of vendor services, paid or incurred less any discounts received. This includes project-specific materials, supplies, equipment rentals, remediation equipment, police details, and utilities.

Project-specific inventory held more than 30 days, and "environmental insurance surcharges" assessed by a subcontract disposal facility, may qualify for up to 5% of the actual cost of the service paid or incurred less any discounts received.

The Board and NHDES reserve the right to negotiate markup multipliers for large remediation projects, on a case-by-case basis.

A service provider may markup work that is performed in accordance with usual and customary industry practice. For example, an environmental consultant may markup a laboratory, driller, or structural engineer, but not another consultant or remediation general contractor. A remediation general contractor may markup a remediation system vendor, or materials disposal facility, but not another remediation general contractor, or consultant.

No markup is allowed on any listed Unit-Based Cost that is usual and customary for a service provider. For example, an Initial Response Action Contractor should have a "Vacuum Truck" in their regular equipment inventory. See the Appendix for Unit-Based Cost Tables 1 and 1A, and Table 3, Allowable Markup.

Overtime:

Overtime is appropriate for projects with long travel distances, versus re-mobilizing to the site, but may be used on any project to reduce overall costs. If cost savings are marginal, a cost comparison may be needed to help NHDES in reviewing the work scope and budget. If cost savings are obvious, overtime rates

may be included in a proposed work scope and budget, with a footnote/explanation noting that overtime was included and the approximate project cost savings. Overtime may also be combined with overnight stays.

Per Diem:

Reimbursement for per diem (meals and lodging) for site activities requiring more than one day of fieldwork is recommended where there is a net savings in daily travel costs. Overnight stays may be combined with overtime for further efficiency, and to reduce overall project costs. Reimbursement is limited to actual costs with markup allowed. Luxury accommodations and travel are excluded.

<u>Program Note:</u> Overtime and per diem may be used for efficiency and to reduce overall project costs.

Professional & Contracted Labor Costs: For purposes of work scope approval and reimbursement, NHDES evaluates labor costs based on the budget for each task, to determine if costs are usual and customary. For professional services, the total approved budget for each task or class generally governs, versus labor rates, to allow flexibility in the use of personnel resources. However, use of labor categories must be consistent with standard industry practice. For example, a "Principal" does not normally perform field work, in lieu of a "Technician".

For contractor services, the published Unit-Based Cost hourly labor rates apply for purposes of work scope approval and reimbursement.

Travel:

Reimbursement for round trip travel from office to job site is payable at the published Unit-Based Cost mileage rate, for standard and four wheel drive automobiles, or the published pickup truck/van rate.

Taxes & Fees:

There is no general sales tax, for goods or services sold or provided in New Hampshire. However, out-of-state taxes and state fees are reimbursable for services that cannot be provided in-state. For example, hazardous waste disposal is not available in-state.

Project-Based Cost Category Descriptions

The following paragraphs describe the tasks or elements included in the scope of work ("SOW") for each Project-Based All work must be Cost category. performed in accordance with applicable NHDES rules, and based upon an authorization to proceed. The not-toexceed reimbursement limit for consulting services for each category is listed in Tables 2 and 2a included in the Appendix. Certain categories include an additional cost increment for electronic data transmittal.

Level I Site Investigation ("SI")

This SOW consists of a site safety plan, background research, sensitive receptor survey, site visit to pre-mark boring locations for Dig-Safe, completion of up to 5 soil borings and installation of up to 4 monitoring wells (3 borings/wells minimum, one of which shall be in the source area), soil sampling, 2 complete rounds of groundwater sampling, well elevation survey, project management, data review, conceptual model development and report preparation. The cost for this SOW is based on one day of drilling.

Level II Site Investigation

This SOW consists of a site safety plan, background research, sensitive receptor survey, site visit to pre-mark boring locations for Dig-Safe, completion of up to 10 soil borings and installation of up to 8 monitoring wells (5 borings/wells minimum, one of which shall be in the source area), soil sampling, 2 complete rounds of groundwater sampling, well elevation survey, slug/bail down testing of up to 3 wells, project management, data review, conceptual model development and report preparation. The cost for this SOW is based on two days of drilling.

Groundwater Management Permit Application

This SOW consists of completing a Groundwater Management Permit Application form and providing supporting information.

Supplemental Site Investigation

This SOW consists of a site visit for Dig-Safe mark-out, site safety plan, completing additional borings and monitoring wells as requested by NHDES, soil sampling, one complete round of groundwater sampling from all monitoring points, well elevation survey, project management and report. The report shall include a summary of soil and groundwater quality to date, a revised conceptual model, updated groundwater contour map, proposed groundwater management zone and updated contaminant plume map. The cost for this SOW is based on one day of drilling.

Initial Site Characterization

This SOW consists of a site visit for Dig-Safe mark-out, background research, site safety plan, and subsurface investigation including soil and groundwater sampling and report preparation.

<u>Dissolved-Contaminant Plume/Groundwater</u> Management Zone ("GMZ") Delineation

This SOW consists of completing additional monitoring well installations to define the limits of a contaminant plume. The costs included are Dig-Safe mark-out, site safety plan, monitoring well installations, location and elevation survey, one round of groundwater sampling from new monitoring wells, and coordination to update the SI data tables and site figures. The costs for this SOW are based on one day of drilling on or off the site.

Annual Summary Report

This SOW consists of completing an annual summary report. The annual summary report shall include a tabulated summary of all analytical data collected to date, graphical presentation of trends in the data for representative sample locations, an assessment of the trends in the data, and any recommendations for remedial action plan or groundwater management permit revisions. The

annual report shall include an updated groundwater contour map and contaminant plume map.

One Round of Groundwater Monitoring

This SOW consists of groundwater and/or drinking water sampling and reporting as requested by NHDES. The data submittal shall include a tabulated summary of analytical results, a revised site plan, groundwater elevation data, and lab data sheets. The cost for this SOW is based on the number of wells where samples are collected, including monitoring well, surface water and drinking water points. Minor product recovery via hand bailing, or replacement or absorbent materials, is inclusive to this SOW for a sampling event. Routine road box maintenance including cleaning/replacement of gaskets and bolts should also be performed.

One Round of Groundwater Monitoring Increments

Incremental cost increases to the one round SOW, are allowed for greater than five wells on a per-well basis, and for off-site private water supply sampling. Additional increments, where required, include a wellhead elevation re-survey, and one round requiring a second day of field work. The wellhead elevation re-survey increment includes coordination, fieldwork, calculations, data tabulation and site may update. The one round requiring a second day increment includes mob/demob, travel, equipment rental and transportation costs.

<u>Project Transition – Single Project</u>

This SOW is applicable when there is a change in the consultant for a site/project, and includes the costs for completing a review of NHDES files, discussions with the NHDES project manager, field-verification site visit, preparation of health and safety plan, conceptual model review, historical information review, and site plan creation.

Project Transition – Multiple Projects

This SOW is applicable when there is a change in the consultant for multiple sites/projects, all under the same ownership, and includes the costs for completing a review of NHDES files, discussions with the NHDES project manager, field-verification site visit, preparation of health and safety plan, conceptual model review, historical information review, and site plan creation. NHDES file review, discussions with NHDES project managers, and other activities may be accomplished concurrently, and the site(s)/project(s) have complex investigative or remedial issues, as determined by NHDES.

Renewal of Groundwater Management Permit

This SOW consists of completing a Renewal of Groundwater Management Permit form and providing supporting information.

Groundwater Management Permit Notification to Landowners & Deed Recordation

This SOW consists of providing notification of the Groundwater Management permit by certified mail to all owners of lots of record within the GMZ and submitting documentation to NHDES. This SOW also includes recording notice of the permit in the local Registry of Deeds in the chain of title for each lot within the GMZ and submitting a copy of the recorded notice to NHDES. The cost for this SOW is based on notification and recordation for up to 3 lots.

Site Closure

This SOW is for completing final site closure activities as authorized by NHDES, for purposes of receiving a Certificate of No Further Action. The work includes project management and technical support for: (1) project review and client coordination; (2) contractor coordination and oversight for decommissioning up to 8 overburden monitoring wells (or up to 120 linear feet); (3) landowner notification and release of deed recordation; (4) coordination decommissioning of the site POE (only); (5) final site walkover; and (6) a brief letter report of closure activities including recommendations for follow up work.

Soil Excavation and Disposal Plans and Bid Specifications

This SOW consists of preparing site-specific soil excavation and disposal plans and bid specifications using the NHDES example specification as a template. Review and

approval of bid specifications is required prior to soliciting bids.

Residential Indoor Air Sampling

This SOW consists of completing a pre-sampling inspection conducted a minimum of 24 hours prior to sampling, collection of 3 twenty four (24) hour time integrated indoor air samples, one each from the basement, first floor living space and an outdoor (ambient) sample and submittal of data to NHDES. The data submittal shall include copies of laboratory data, reported in units of micrograms per meter cubed, and the completed Residential Indoor Air Sampling Form.

<u>Sub-Slab Source Characterization for Residential</u> OPUF

This SOW consists of completing corings through the concrete floor to obtain soil samples, screen soils with a PID, submit soil samples for laboratory analysis as directed by NHDES, seal core holes and complete a data submittal. The data submittal shall include a sketch showing sample locations, PID data and copies of laboratory data. The cost for this SOW is based on one day of fieldwork and includes any subcontracted coring services.

<u>Groundwater Quality Assessment for Residential</u> OPUF

This SOW consists of completing a site visit for Dig-Safe mark-out, site safety plan and the following or as otherwise directed by NHDES: Install up to 3 monitoring wells, (one well at a minimum to be installed as close as possible to the source area in the presumed down gradient direction), collect one round of groundwater sample(s), collect one source area soil sample, complete a well elevation survey (if all 3 wells are installed) and submit data results to NHDES. The data submittal shall include a site sketch showing sample locations and the location of the discharge, PID data and copies of laboratory data. The cost for this SOW is based on one day of drilling. Should the NHDES request additional sampling round(s) the one-round of groundwater monitoring task listed above may be used.

Soil Delineation Sampling and Increment

This SOW consists of completing soil sampling to characterize the nature and extent of soil contamination including in-situ disposal characterization sampling. Tasks included in this SOW include dig-safe mark-out, completion of soil borings or test pits, collection of soil samples for extent and disposal characterization analysis in accordance with NHDES and receiving facility requirements (for VPC soils this typically includes VOC, TPH and ignitability), and report completion. The report shall include a site sketch showing sample locations, location of discharge, lateral limits of contamination, calculations estimating the amount of contaminant mass and quantity of soil (in tons) exceeding NHDES standards, PID data, copies of laboratory data, boring or test pit logs and recommendations. The cost for this SOW is based on one day of soil borings or test pits. An incremental cost increase is allowed for soil delineation sampling that requires a second day of fieldwork.

Electronic Transmittal Monitoring Station Location & Setup (See Appendix for Additional Guidance)

This SOW is for one-time station locating using GPS equipment and one-time station setup, for purposes of periodic transmittal of public water supply or corrective action water quality monitoring data via electronic media. One-time station location and setup is as directed by NHDES using NHDES templates. Station field locating is performed during a routine monitoring event. The budget is for increments of up to six (6) stations.

Electronic Transmittal - Water Quality Monitoring Field Data (See Appendix for Additional Guidance)

This SOW is for periodic transmittal of public water supply or corrective action water quality monitoring field data via electronic media, as directed by NHDES using NHDES templates. The budget is for increments of up to six (6) stations.

Electronic Transmittal - Water Quality Monitoring Lab Data (See Appendix for Additional Guidance)

This SOW is for periodic transmittal of public water supply or corrective action water quality monitoring laboratory data via electronic media as directed by NHDES using NHDES templates. The consulting firm or laboratory may perform the work to populate the NHDES template with laboratory analysis data, using appropriate hourly personnel. The budget is for increments of up to six (6) stations.

MW Decommissioning, Or Road Box Replacement Coordination (See Appendix for Additional Guidance)

This SOW consists of consultant time to secure the services of a service provider to complete monitoring well decommissioning or road box replacement. A brief description of the decommissioning methodology may be included with a reimbursement request.

<u>Environmental Monitoring At Contaminated Soil</u> Excavation Projects

This SOW provides for environmental monitoring by a consultant to assess the adequacy of the contaminated-soil removal based on observations, instrument readings, and collection of representative samples. The costs include all labor, travel, instruments, PPE, photos, lab coordination, equipment, supplies, materials, and expenses to oversee and monitor the excavation of contaminated-soil. The coordination with an analytical laboratory on the environmental samples will include sample preservation and delivery, chain-of-custody documentation, receipt and submission of analytical results to NHDES.

Dig-Safe Pre-Marking

This SOW consists of conducting a site visit and pre-marking boring/well and/or excavation locations as required by Dig-Safe.

Free Product Recovery

This SOW consists of completing six site visits at the frequency requested by NHDES (typically monthly) to recover free product using bailing or adsorbents, recovery materials and supplies, coordinating product disposal, and submittal of a brief letter report. The report shall include water

and product levels, product thickness and amount recovered (estimates acceptable when using adsorbents). Disposal costs for recovered product shall be at the Unit-Based Cost. The cost for this SOW is based on six days in the field.

Enhanced Fluid Recovery

This SOW consists of completing one site visit to recover free product using a vacuum truck. Fluid recovery shall be completed at specified wells containing free product using a vacuum truck. The letter report shall include water and product levels, amount of product/liquids recovered from each well and observed product recharge in each well. The cost for this SOW is based on consultant costs and subcontracted vacuum truck and operator costs. Disposal costs for recovered product shall be at the Unit-Based Cost.

NHDES Temporary Surface Water Discharge Permit

This SOW consists of completing the necessary forms from the NHDES pursuant to RSA 485 (a) (13) to obtain a permit for discharging treated water to surface water. The costs include all labor, travel, supplies and services for completing the application, providing a site map and analytical sampling results to NHDES, and responding to NHDES comments and requests to obtain the permit.

Bid Administration

This SOW consists of soliciting a minimum of 3 bids, conducting the bid opening, and submitting a tabulation of the bid results to NHDES with a recommendation for award. The cost for this SOW includes conducting a site meeting with prospective bidders.

Off-Site Access Agreement

This SOW consists of obtaining a site access agreement for an off-site property to perform required cleanup activities. The cost for this SOW is based on two attempts to obtain a written access agreement. NHDES shall be notified immediately upon failure to obtain a signed agreement. Unrelated legal fees are not eligible for reimbursement.

Initial Response Action Report Standard Form

This SOW consists of completing the Initial Response Action Report Form and providing supporting information. The submittal shall document response actions conducted and shall include a site sketch and any applicable attachments such as laboratory data, bills of lading for soil disposal, and site photos.

<u>Initial Response Action Report – Complex Site</u>

This SOW consists of completing the Initial Response Action Report Form and providing supporting information listed above, and additional correspondence or a brief report providing data interpretation and recommendations for additional work. This SOW is applicable for sites/projects where groundwater impacts are known, potential third-party impacts are anticipated, or the site occupants may be at risk, as determined by NHDES.

Structural Engineering Assessment

This SOW covers a structural inspection and rendering of a professional opinion on the structural integrity in terms of excavation of contaminated soil from around or under the foundation. The cost includes labor, travel, instruments, PPE, photos and expenses to provide a written assessment document prior to excavation of oil-contaminated soil from around or under the foundation of the structure. A Professional Engineer with structural engineering design experience shall sign the assessment document.

OPUF Mobilization/Demobilization

This SOW covers the costs for transporting personnel, equipment, supplies and materials to the job location. It also includes a site visit and Dig-Safe mark-outs. The lump sum amount applies to all preparation and support for a typical fuel remediation effort that does not exceed 5 working days.

OPUF Exterior Soil Excavation

This SOW covers 1 day of oil-contaminated soil excavation and includes labor, equipment, supplies, materials, and PPE. The NHDES Initial Response (IR) manager shall approve the appropriate number of excavation days. The not-

to-exceed limit applies to all exterior soil excavation for a typical fuel remediation effort that does not exceed a total of 5 working days for excavation and backfill/restoration.

OPUF Exterior Backfill and Site Restoration

This SOW covers 1 day of backfilling the excavation and restoring the work areas to the original condition including labor, equipment, supplies, materials, and PPE. The NHDES IR manager shall approve the appropriate number of backfilling days. The not-to-exceed limit applies to all exterior backfill and site restoration for a typical fuel remediation effort that does not exceed a total 5 working days for excavation and backfill/restoration.

OPUF Interior Soil Excavation

This SOW covers 1 day of oil-contaminated soil excavation under a structure or mobile home and includes labor, equipment, supplies, materials and PPE. The cost to exhaust fuel vapors is included for a week. The NHDES IR manager shall approve the appropriate number of excavation days. The not-to-exceed limit applies to all interior soil excavation for a typical fuel remediation effort that does not exceed a total of 5 working days for excavation and backfill/restoration.

OPUF Interior Backfill and Site Restoration

This SOW covers 1 day of backfilling the excavation and restoring the work areas to the original condition including labor, equipment, supplies materials, and PPE. The NHDES IR manager shall approve the appropriate number of backfilling days. The not-to-exceed limit applies to all interior backfill and site restoration for a typical fuel remediation effort that does not exceed a total 5 working days for excavation and backfill/restoration. The backfill materials costs will be approved at the Unit-Based Costs.

<u>OPUF Contaminated Soil Load and Transport</u> (<u>Live Load</u>)

This SOW covers the loading and transport costs for off-site disposal of oil-contaminated soil. This effort is conducted in conjunction with the OPUF excavation and backfilling operations but does not need to be completed within the 5 working

day period. The costs include all labor, supplies, materials, and equipment to direct load or load from a contaminated-soil stockpile into dump trucks/trailers for immediate transport to a disposal facility. The NHDES IR manager shall approve the appropriate number of live load and transport days appropriate for the soil volume removed.

<u>OPUF Contaminated Soil Load and Transport</u> (Roll-Off Cans)

This SOW covers the loading and transport costs for off-site disposal of oil-contaminated soil. This effort is conducted in conjunction with the OPUF excavation and backfilling operations but does not need to be completed within the 5 working day period. The costs include all labor, supplies, materials, and equipment to deliver and stage roll-off containers, load contaminated soil into the roll-off containers, and transport to a disposal facility. The NHDES IR manager shall approve the number of roll-off load and transport days appropriate for the soil volume removed.

<u>OPUF Contaminated Soil Load and Transport</u> (Vactor)

This SOW covers the loading and vactor-related transport costs for off-site disposal of oil-contaminated soil. This effort is generally conducted in conjunction with the OPUF interior excavation and backfilling operations but does not need to be completed within the 5 working day period. The costs include all labor, supplies, materials and equipment to use a vactor vehicle to remove contaminated soil/stone and transport the contained material to a disposal facility. The NHDES IR manager shall approve the number of vactor days appropriate for the soil volume to be removed.

POE Annual O&M

This SOW consists of performing an annual site visit and conducting necessary POE system repairs and preventive maintenance. The cost for this SOW includes all labor, expendable supplies, mileage and any subcontracted services.

POE O&M Visit

This SOW consists of performing a site visit and conducting necessary POE system operation and routine maintenance. The cost for this SOW includes all labor, expendable supplies, and mileage.

POE Site Evaluation & Installation Coordination Increment

This SOW consists of performing a site visit and required sampling and analysis to determine adequate point-of-entry (POE) treatment system installation requirements. Lab analysis may include bacteria, radon, hardness, pH and Data submittal shall inorganic compounds. include proposed system components and analytical data. The cost for this SOW includes all labor, sampling equipment, expendable supplies, mileage, and laboratory fees. installation coordination increment is consultant coordination of POE installations. when required, including an initial site visit and client, contractor and third-party communications. This includes all consultant labor, equipment, expendable supplies, and mileage.

POE Maintenance Coordination

This SOW consists of consultant time to coordinate the services of a POE service provider for maintenance events.

POE Carbon Change Out

This SOW consists of performing POE carbon change out as required based on calculations or actual break through. The cost for this SOW includes all labor, expendable supplies, mileage, new carbon and disposal or reactivation of spent carbon and any subcontracted services. The cost for this SOW is based on 4 cu. ft. of carbon.

POE Installation (4 cubic feet)

This SOW consists of providing and installing two 2-cubic foot granular activated carbon (GAC) units in series including sampling taps, valves and plumbing materials. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

POE Installation (6 cubic feet)

This SOW consists of providing and installing two 3-cubic foot GAC units in series including sampling taps, valves and plumbing materials. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

POE Installation (8 cubic feet)

This SOW consists of providing and installing two 4-cubic foot GAC units in series including sampling taps, valves and plumbing materials. The cost for this SOW includes all labor, equipment, expendable supplies, and mileage.

Water Softener Pretreatment Add-on

This SOW consists of providing and installing a water softener, timer control, bypass valves and plumbing materials for pretreatment prior to carbon treatment. The cost for this SOW includes all labor, equipment and expendable supplies. These units are appropriate if iron, manganese or hardness need to be removed prior to carbon treatment. Secondary drinking water standards shall be used to determine if pre-treatment is required.

Residential Air Stripper Pretreatment Add-on

This SOW consists of providing and installing a residential air stripper, flow-controls, valves, exterior vent stack, and plumbing materials for pretreatment prior to carbon treatment. The cost for this SOW includes all labor, equipment and expendable supplies.

Iron Filter or Neutralizer Pretreatment Add-on

This SOW consists of providing and installing a filter or neutralizer for ferric iron content, valves and plumbing materials for pretreatment prior to carbon treatment. The cost for this SOW includes all labor, equipment and expendable supplies. These units are appropriate if iron and manganese need to be removed prior to carbon treatment. Secondary drinking water standards shall be used to determine if pre-treatment is required.

VII. HOW-TO OBTAIN FUND PROGRAM COVERAGE & SUBMIT A REIMBURSEMENT REQUEST

How Can I Secure Fund Program Coverage?

- Owners of regulated AST and UST facilities should achieve compliance with operational rules and then maintain compliance, or permanently close a non-compliant facility. Facility owners should be aware of NHDES inspection procedures, and be prepared to assist when inspections occur.
- Owners of residential fuel oil facilities should contact their fuel oil dealer to request an inspection, or otherwise verify that the system is sound. NHDES strongly recommends that buried fuel oil lines in direct contact with the ground be replaced. Owners must achieve compliance by July 1, 2010.
- AST, UST and on-premise-use fuel oil facility owners *must* review their insurance policies and determine if there is pollution coverage, and the coverage limits. NHDES recommends that owners of gasoline ether contamination source sites also review insurance coverage.
- Owners of gasoline ether contamination source sites, including motor vehicle salvage yards and dealerships, should achieve and maintain compliance with applicable rules for gasoline release prevention, or establish a compliance schedule.

- Owners should be aware of NHDES inspection procedures, and be prepared to assist when inspections occur.
- Qualifying persons should know that, under state statute, any person who causes or suffers a petroleum discharge or contamination has a duty to report the incident to NHDES immediately.

I Have Petroleum Contamination, At My Qualifying Facility Or Property – What Steps Should I Follow?

- Report to NHDES.
- Hire a corrective action service provider(s).
- For the excess insurance funds. contact your insurer and specifically request if coverage is available for any corrective action costs that may be incurred. Submit a copy of the insurance company reply. If there is no private insurance policy in force, submit a notarized letter stating so. Owners of gasoline ether contamination source properties should also check availability of insurance.
- Correct any facility compliance deficiencies.

NHDES Has Requested Corrective Action & I Don't Have Insurance, Or My Own Funds

Many corrective action service providers will work under a contract with provisions for direct payment as an applicant to the fund program. If you are an on-premiseuse fuel oil facility owner, you will have to pay \$100 to the service provider for the fund program deductible. If you are an owner of a regulated AST or UST facility, you will receive a bill for your fund program deductible after the applicant for the first receives payment reimbursement request. (There is no deductible for the gasoline ether fund.)

<u>Program Note:</u> Proof of payment for invoiced costs is not required.

If, due to financial hardship, you cannot pay the fund program deductible within 30 days of invoice receipt, you *must* propose a payment plan to the Board. Contact NHDES for guidance and payment plan approval criteria.

I Have Incurred Corrective Action Costs, & Have Limited Insurance Coverage

If you have limited private insurance coverage you must submit invoices to your insurer until the limits of coverage are reached. If your insurer denies payment of any costs as, not payable within the limits of coverage, you may not submit these denied costs to the state fund program. You may also not submit costs to the state fund program that are included under the limits of private insurance coverage, but are subject to a

private insurance deductible. However, you may use private insurance specifically to cover the costs of state fund program AST or UST facility deductibles, or may qualify for state fund coverage due to a private policy including self-insured risk retention provisions.

When the limits of coverage under private insurance are reached, the state fund program is available and a qualifying person may submit reimbursement requests.

What Does A Complete Fund Program Reimbursement Request Submittal Include? (Tip: This Checklist Is Included Separately To Photocopy.)

- A completed Request For Reimbursement Authorization form (found in the Appendix). The form is needed for the first reimbursement request submitted by a facility owner or eligible property owner. If fund eligibility is transferred, a form is needed for the first request from the new owner.
- A Cover Letter. (See format in the Appendix.)
- A summary (listing) of invoiced expenses or web-based service cost summary.
- A copy of the Work Scope Approval, Change Order Approval, or NHDES corrective action request letter applicable to the request. Contractor daily work logs may be needed for "emergency services".

- □ Copies of invoices from all contractors and sub-contractors for time and materials requests, or tabulation of bid item quantities, and/or web-based service cost summary. Invoices must be directed to the facility owner or eligible property owner, including a request submitted by an applicant. Invoices cannot be directed to NHDES.
- A copy of the services contract between the facility owner or eligible property owner and the applicant, if applicable.
- Employee wage, benefits, and equipment operating cost data for corrective action performed by a facility owner or eligible property owner.
- ☐ Complete information on payment(s) received from private insurance, including a statement explaining the coverage limits, a letter denying coverage, or a notarized statement for un-insured properties.
- A copy of the legal agreement stating a former facility owner is obligated to perform corrective action after ownership transfer.
- A request for co-payment to the owner and service provider, if applicable.

I Do Not Have All Required Documentation, Or Approvals

A waiver request may be submitted for missing documentation or approvals including subcontractor invoices, registration of an AST facility, or other provisions of the program rules, for consideration by Board. The Board cannot waive any rule that would constitute a waiver of a statute. Contact NHDES for guidance concerning waiver requests.

Audits & Qualifications

Qualified persons and applicants must allow the Board to conduct periodic financial audits of all records related to a reimbursement request. Those with one year or more satisfactory experience providing services and submitting paper reimbursement requests, may qualify for submitting web-based reimbursement requests. Contact NHDES for more information on submitting web-based requests.

What Happens When A Reimbursement Request Is Submitted To NHDES?

If a reimbursement request is not substantially complete, it may be returned to the sender, or held until completed. NHDES personnel may telephone to request additional information to complete a request. If complete, the request is logged into a database for tracking and reporting. If NHDES records indicate facility compliance was not achieved, or a compliance schedule was not approved, as applicable, the request is held pending

verification of compliance. If the facility is in compliance the request is assigned for review. (NOTE: It is the owner's responsibility to be aware of facility compliance status, and to notify NHDES staff if the compliance status has changed.)

NHDES staff will determine (or confirm) if the costs are reimbursable under Board rules and policies, verify that the corrective action was performed, and verify that acceptable reports were provided by the contractor or consultant. Web-based reimbursement request submittals will receive priority treatment for assignment and review.

How Long Does It Take To Process A Reimbursement Request?

Reimbursement requests are reviewed in consideration of the priority status of the project, determined by NHDES, or on a first-in, first-out basis if funds are limited. The time required for database login, staff assignment, and review to determine reimbursable costs, is typically between 45 and 60 days. The Board must review requests requiring waivers. When a request is processed NHDES issues a Notice of Reimbursement ("NOR") and payment from the State Treasurer occurs in 15 -20 days. The NOR includes detailed information on the amount of the current reimbursement request. amount payable for the current request, the total amount of reimbursable (a.k.a. eligible) costs to date, the deductible amount, a listing of costs for each current invoice. and comments regarding reimbursable cost deductions, if any.

After A Reimbursement Request Is Processed, Can Additional Information Be Submitted?

Yes. A re-submittal of a processed request may be provided within 180 days of NHDES action on the original request. and must include: (1) a copy of the NOR with the specific invoices identified for which reconsideration is sought, and (2) an explanation of the basis of the resubmittal with additional supporting documentation as needed. However, NHDES encourages persons submitting reimbursement requests to provide complete documentation in the first instance, and avoid re-submittals. Resubmittals are also considered based on project priority, or on a first-in, first-out basis.

Can Multiple Reimbursement Requests Be Submitted?

Yes. As long as corrective action is necessary and costs are being incurred to bring the project to regulatory closure, reimbursement requests may be submitted. However, a reasonable limit on the number of reimbursement submittals for on-going work is one per month.

How Do I Prepare & Submit A Reimbursement Request?

Three alternatives are available for the preparation of reimbursement requests. A request may be prepared and submitted by the qualified person, or by a corrective action service provider on behalf of a qualified person, or by an applicant.

Reimbursement request preparation costs are not covered expenses.

An applicant for direct payment *must* prepare and submit the reimbursement request for their services. Due to the waiver of claims provision in an applicant contract (See Section II), the applicant cannot balance-bill their client for non-reimbursable costs. However, the applicant may bill their client for other work not included under the contract.

For all other work, NHDES recommends that the corrective action service provider prepare and submit reimbursement requests on behalf of their client. Service providers with fund program experience are already familiar with reimbursement request submittal criteria and approval procedures. It may be difficult for the client to assemble the information necessary in support of a reimbursement request, particularly for unusual project circumstances. Although reimbursable. the fee charged for reimbursement request preparation is typically small. (Owners of multiple fundeligible locations often employ services of firms that specialize in reimbursement preparing state fund requests.)

However, for those who prefer to prepare their own requests, NHDES personnel recommend the following steps:

 Use the Reimbursement Request Checklist/Ten Common Reasons reference pages as a guide, and assemble relevant documents needed to prepare the request. It is important to determine that a facility is in

- operation compliance, and all insurance documentation, contractor and subcontractor invoices and all reports related to the corrective action are available.
- 2. Complete the Request for Reimbursement Authorization form found in the Appendix, if submitting a first request, and sign the Owner's Liability Statement & Affirmation. The form is not needed for subsequent unless ownership requests transferred. If so, the new owner must complete and submit a form with their first request. The submitted form *must* have an original signature.
- 3. Complete the (example) Invoice Summary found in the Appendix, or a facsimile of your own design, that includes all column headings as shown on the example. An invoice summary is a tool to list and organize invoiced expenses, to reconcile those expenses against approved budgets. NOTE: All work should be preapproved to avoid an overage.
- 4. If a budget overage was unavoidable, a waiver request will be necessary that details (1) why the overage occurred and (2) the incremental costs in excess of the approved budget. (This will likely require consultation with the service provider or their direct assistance.) Contact NHDES regarding waiver request preparation.
- **5.** Prepare a cover letter following the example format found in the Appendix.

6. Photocopy the reimbursement request for your records then submit the request to the NHDES.

Work Scope & Reimbursement Submittals Should Be Forwarded To:

Joyce P. Bledsoe, P.G., Fund Manager Oil Remediation and Compliance Bureau 29 Hazen Dr., P.O. Box 95 Concord, NH 03302-0095

You may call NHDES at any time to request guidance in preparing a reimbursement request.

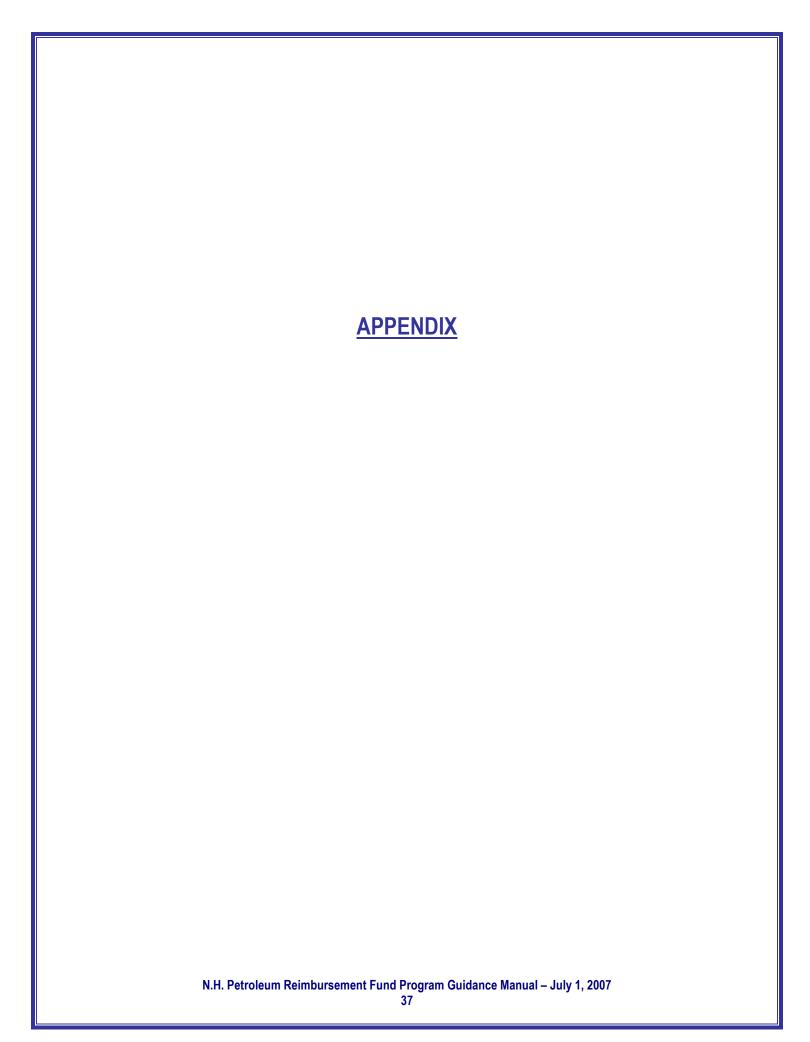
Web-Based Reimbursement Requests

The Board and NHDES encourage the use of electronic media when submitting corrective action data, documents and reimbursement requests. Electronic submittal facilitates timely review and processing by NHDES and improves public access.

Qualified persons and applicants with one year or more satisfactory experience providing services and submitting paper reimbursement requests, may qualify for reimbursement web-based request submittal. Participants are required to obtain/use an electronic data provider "PIN" and password, and otherwise agree to NHDES internet security protocol. Webbased reimbursement request submittal is highly "user friendly", allows the user to track each step of the process, and includes automated email notification at each step. Contact NHDES for more information on submitting web-based requests.

Do I Have Rights Of Appeal?

Yes. Any person aggrieved by a decision concerning fund program eligibility or reimbursement may request an appearance or a formal hearing before the Board. Appearance and hearing procedures are detailed in rule Odb 200 found in the Appendix.



Reimbursable Costs For Monitoring Well Decommissioning

The following work tasks are reimbursable to either the consultant or the licensed drilling contractor when completing a standard⁽¹⁾ 2-Inch ID monitoring well decommissioning:

Work Tasks

- 1. Dig-Safe and Utility Clearance;
- 2. Decommissioning well⁽²⁾;
 - a. Filling well with bentonite chips or slurry;
 - b. Removing road box or protective casing:
 - c. Cutting well casing off below the ground surface;
 - d. Finishing the ground surface to existing conditions;
- 3. Disposal of construction/demolition and other waste materials; and,
- 4. Submittal of well decommissioning form.

Reimbursable Costs

The following listed expenses may not be necessary for all jobs. The consultant and contractor are responsible for ensuring that expenses are appropriate for the work completed.

- 1. Materials and Supplies Health and Safety Supplies, Traffic Sign Package, 55-Gallon Drum, Surface Finish Materials [Gravel (or), Concrete (or), Asphalt (or), Loam & Seed], Bentonite Chips or Slurry Per Foot Allowance (\$4 per LF)
- 2. Materials Disposal Laboratory Analysis (VOC/TPH/Ignitability), Contaminated Soil Disposal, Construction Demolition Debris Disposal
- 3. Support Vehicle Support Vehicle, Mobilization/demobilization
- 4. Misc. Equipment Steam Cleaner, Concrete Saw & Blades (or) Jackhammer with Bit & Hose, Air Compressor (for jackhammer), Grout Pump
- 5. Field Labor and Reporting Dig Safe Pre-Marking, Submittal of a Water Well Board "Abandoned Well Registration Report" form for each well. This can be submitted with reimbursement claim.

Notes:

- (1) The following conditions are not considered standard monitoring well construction: a) bedrock wells; b) a well that penetrates a confined hydraulic system or continuously confining strata; c) a well with an ID greater than 2 inches; and, d) drinking water wells.
- (2) DES pre-approval of additional supplies, equipment, Per Diem, or decommissioning non standard wells will require submittal of a work scope and budget or change-order for pre-approval from the DES project manager.

Reimbursable Costs For Environmental Monitoring Database ("EMD")

Work Tasks

Monitoring station setup and electronic submittal of field and laboratory data

Reimbursable Costs

- 1) Station Setup Not-to-Exceed (NTE) \$450 to \$550
 - a. GPS locating is to be completed during a groundwater sampling event.
 - b. The NTE budget is for establishment of up to six (6) stations. (Up to \$550 is available for use of GPS with <10 feet accuracy.) For additional stations, the NTE budget is increased \$75 per station.
 - c. This effort is completed by the consultant under DES direction.
- 2) Submittal of Field and Laboratory Data
 - a. Submittal of Field Data NTE \$150
 - i. Field-measured parameters (i.e., groundwater level/elevation, free product thickness, pH, DO, etc.);
 - ii. The NTE budget is for submittal of data for up to six (6) stations. For additional stations, the NTE budget is increased \$25 per station.
 - iii. This effort is completed by the company that completes the sampling.
 - b. Submittal of Laboratory Results NTE \$180
 - Submittal of laboratory results in an electronic database format acceptable for the DES EMD.
 - ii. The NTE budget is for submittal of data for up to six (6) stations. For additional stations, the NTE budget is increased \$30 per station.
 - iii. This effort can be completed either by the laboratory directly to the EMD or by the consultant to the EMD.
 - c. The NTE budget for submitting both field and laboratory data for up to six (6) stations, including markup of a subcontracted laboratory, is \$330. For additional stations, the NTE budget is increased \$55 per station.

Table 1. Unit-Based Costs

Effective July 1, 2007



Effective July 1, 2007				
Absorbents, Cleaning, & Containment	Unit	Not-to-Exceed ("NTE") Rate		
Containment boom, up to 18"	Foot	\$1.30		
Containment boom, 24"	Foot	\$1.55		
Sorbent pads, 18"x18"x3/16", 200 per bale	Б.	\$92.00		
Sorbent boom 10'x8" diam., 4 per bale	Bale	\$184.00		
Oil Snares, 30 units/box	Вох	\$46.00		
Speedi-dry, 50lb. Bag	Bag	\$7.00		
Polyethylene bags, 38" x 60" 4 mill	Bag	\$1.00		
Polyethylene roll 100' x 20'	Each	\$92.00		
Degreasers	Gallon	\$53.00		
Containers	Unit	NTE Rate		
Storage tank (1,000 gallon)		\$15.30		
Storage tank (5,000 gallon)	1	\$15.30		
Storage tank (Frac-20,000-gallon)	1	\$39.50		
Roll-Off Container, 10 c.y.	Half-Day	\$9.00		
Roll-Off Container, 20 c.y.	1	\$12.00		
Roll-Off Container, 30 c.y.	1	\$13.00		
Frac Tank Drop Fee	Hour	\$87.00		
Roll-Off Liner, all sizes		\$64.00		
Drums, 55 gallon Type 17E, closed head		\$33.00		
Drums - 55 gallon 17H, open head	1	\$38.00		
Drums, 25M, poly, 55 gallon		\$38.00		
Drums, 17E, poly, 30 gallon	Each	\$22.00		
Drums, 17H, poly, 30 gallon		\$26.00		
Box, Flexible fiber, 1 CuYd		\$120.00		
Pails, poly, 5 gallon (Lab Pack)	1	\$9.20		
Overpack drums, 1A2/X427/S, 85 gallon, steel	1	\$80.00		
Overpack drums, 1H2/X340/S, 95 gallon, poly	1	\$161.00		
Disposal & Treatment (1)	Unit	NTE Rate		
Bulk Liquid Disposal (gasoline)		\$1.82		
Bulk Liquid Disposal (fuel oil)	Gallon	\$0.51		
Bulk Heavy Oil/Water	1	\$0.69		
Mixed Liquid Disposal (gasoline/water)		\$260.00		
Mixed Liquid Disposal (fuel oi/water)	Drum	\$128.00		
VPC Soil Disposal (3 drums or less)	1	\$128.00		
Oil Debris Disposal (in bags)	Bag	\$31.00		
Oily Debris Disposal (in "T" packs)	Pack	Cost + Item		
VPC Soil Treatment - Thermal or Asphalt-Batching		\$33.00		
VPC Soil Disposal - Landfill	Ton	Cost + Item		
Oil-Contaminated Debris & Soil Mixtures - Landfill		2001		

Drilling	Unit	NTE Rate
Drill rig (HSA) with 2-man crew		\$1,350.00
Drill rig (ATV) with 2-man crew		\$1,450.00
Steam cleaner	Day	\$82.50
Air Hammer Attachment + Compressor	Day	\$325.00
Geoprobe/Direct Push Rig with operator		\$1,100.00
Grout Pump		\$300.00
Auger teeth	Job	\$25.00
8-inch flush road box		\$75.00
4-inch steel protective casing		\$85.00
Geoprobe well points - 3.25" casing	Each	\$28.00
Compression or "J " Plugs		\$12.00
Rx Core/Air Hammer bit wear		\$15.00
Well materials - 2-inch PVC	Foot	\$10.00
Well Decommissioning 2-inch PVC		\$4.00
Support Vehicle	Half-Day	\$75.00
Mobilization/demobilization (installation or decommission) <50, 50-100 miles	Lump Sum	\$300-\$400
Road Box Replacement (from 1 to 3 wells) 8-inch flush	Well	\$250.00
Road Box Replacement (from 4 to 6 wells) 8-inch flush	VVCII	\$200.00
Excavating & Loading	Unit	NTE Rate
Vactor Truck	Hour	\$109.00
Vactor Hose, 4 in. dia. or greater	Foot	\$1.53
Backhoe with attachments		\$270.00
Mini-Excavator		\$204.00
Excavator - 150 type		\$347.00
Excavator - PC 300 type		\$500.00
Loader - Bobcat type	Half-Day	\$163.00
Loader - 3 cy bucket		\$347.00
Barrel Crusher, Backhoe mounted		\$102.00
Barrel Grabber, backhoe mounted		\$76.50
Bobcat attachments		\$143.00
(Reserved)	(Reserved)	(Reserved)
Grass seed	Pound	
Common Backfill	Ton	Cook : It-:
Gravel/crushed stone	I ION	Cost + Item
Flowable Fill		
Loam	Yard	
Health and Safety	Unit	NTE Rate
Level A PPE	Half-day/person	\$109.00

Level C PPE	Half-day/person	\$28.00
Labor premium for Level D PPE	Day/person	\$26.00
Labor	Unit	NTE Rate
Site Supervisor Or Project Manager		\$92.00
Foreman		\$61.00
Technician		\$49.00
Equipment Operator	Hour	\$54.00
Licensed Plumber	Houl	Cost + Item
Licensed Electrician		COSt + Itelli
Overtime premium		Per State IR Contract (2)
Per Diem	Person/day	\$108.00
Laboratory Analysis	Unit	NTE Rate
VOC Full List (w/trip blank)		\$160.00
Method 524.2 Drinking Water		\$150.00
8270B or 8310 (PAH)		ψ130.00
8015B DRO or GRO (TPH)		\$90.00
Ignitability (1010)		\$35.00
VOC/TPH/Ignitability - VPC soil disposal characterization		\$260.00
VOC/TPH/PAH - Soils		\$385.00
VOC/TPH - Soils	1	\$225.00
TCLP Metals (8 RCRA) and prep time	1	\$195.00
8021B BTEX, MtBE and/or Naphthalene	1	\$100.00
MtBE Only	Each	\$75.00
Ethers Only	1	,
BTEX & Ethers	1	\$140.00
Alkalinity	1	\$25.00
Total &/or Dissolved Metals	1	\$40.00
Dissolved Metals	1	\$15.00
Metals sample preparation charge	1	\$10.00
Methane	7	\$92.50
Nitrate	7	\$20.00
Sulfate		\$∠0.00
Total Organic Carbon (TOC)		\$50.00
EPA Method TO-15 Canister sampling for BTEX, MTBE and/or Naphthalene]	Cost

⁽²⁾ The following rate schedule applies for OT work:

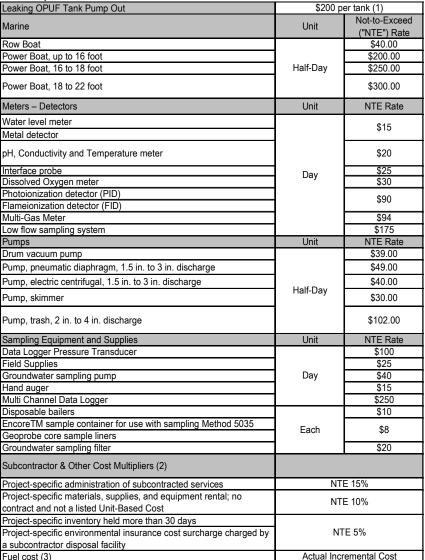
Weekday - Base X 1.5, for work in excess of the contractor's standard workday; Saturday - Base X 1.5; and

Sunday & Holiday - Base X 2.0.

⁽¹⁾ Transportation for disposal shall be performed at lowest cost, on a time and materials basis or unit rate basis. For landfill disposal of VPC soil, total transportation and disposal costs must be less than asphalt-batch or thermal treatment.

Table 1A. Unit-Based Costs

Effective July 1, 2007



Tools & Equipment	Unit	NTE Rate
Concrete Saw with blade	Day	\$230.00
Concrete Saw Blade	Each	Cost + Item
Blower/exhaust fan, explosion proof 1,570 CFM		\$16.00
Skimmer - Duckbill, Slurp, Swiss		\$31.00
Reciprocating saw, electric or pneumatic w/ blades		\$31.00
Portable floodlight		\$28.00
All other powered hand tools		\$20.00
Chain Saw, gas or electric, all sizes		\$33.00
Rotary percussion drill, electric or pneumatic, 1/2" to 3/4"		\$33.00
Blower/exhaust fan, explosion proof 5,000 CFM	Half Davi	\$33.00
Transit or level, tripod, rod, and tape	Half-Day	\$41.00
Jackhammer with bit and hose		\$44.00
Water Blaster – up to 3,000 psi		\$51.00
Compactor - walk behind 20 x 28" vibrating plate		\$56.00
Steam Cleaner – 800 psi		\$61.00
Air Compressor 125/175 psi		\$67.00
Generator, up to 5000 watt	Į.	\$65.00
Concrete corer - 6" to 8" diameter		\$82.00
Compactor – double drum type		\$112.00
Light tower w/generator		\$112.00
Traffic Signs Package	Incident	\$100.00
Blower/exhaust fan, explosion proof 1,570 CFM	Week	\$92.00
Blower/exhaust fan, explosion proof 5,000 CFM	Week	\$153.00
Vehicles	Unit	NTE Rate
Automobiles, 2-wheel and 4-wheel drive	Mile	IRS Rate
Pickup Truck or Van	Half-Day	\$66.00
Vehicles & Trailers	Unit	NTE Rate
Lowboy trailer with tractor Mob/Demob Fee	Each	\$612.00
Flat Bed Trailers		\$102.00 \$128.00
Dump Truck - 6 Wheel RackTruck		\$128.00
Rackituck	ł	\$120.00
Fully equipped Emergency Response Trailer/Van	Half-Day	\$135.00
Transport Tankers, 3000 gallon minimum		\$163.00
Box Truck		\$163.00
Dump Truck - 12 Wheel		\$191.00
Vacuum truck	Hour	\$66.00
Roll-Off Trailer	1	\$66.00

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Oil Fund Disbursement Board

Unit-Based	Cost	Notes:

Equipment rates include all costs of operation and maintenance exclusive of operator, unless specified otherwise.

Laboratory analysis rates include sample preparation, analysis, and disposal, based on standard turnaround time. NHDES must approve expedited service and additional charges. Trip blanks are reimbursable at listed rates, field blanks require prior approval.

All listed rates are considered not-to-exceed. Reimbursement shall not exceed actual invoiced costs, paid or incurred less any discounts received. Cost + items are reimbursable at the firm invoiced cost plus allowable markup. No markup is allowed on any listed Unit-Based Cost that is usual and customary for a service provider. For example, an Initial Response Contractor should have a Vacuum Truck. The Board and NHDES reserve the right to negotiate markup multipliers for large or special projects.

Drilling rates include all costs of labor, operation and maintenance for overburden drilling. NHDES must approve bedrock drilling and additional charges.

The service provider, subcontractor or vendor invoice may be considered the corrective action report for various services. Contact NHDES for reporting guidance.

⁽¹⁾ Labor and materials to pump out a visibly-leaking heating oil storage tank.

⁽²⁾ The Board reserves the right to negotiate a project-specific markup rate.

⁽³⁾ Service providers seeking compensation for increased motor fuel costs shall track fuel usage for the project and calculate the cost differential from the November 2006 fuel price for N.E. PADD 1A, published by the USDOE/EIA. http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_a_epm0_pte_cpgal_m.htm

Table 2. Project-Based Costs



Effective August 23, 2006

Electronic Investigation, Remedial Action, Or Groundwater Phase Not-To-Exceed Submittal Monitoring ("NTE") Budget Code (1) Increment (2) SIR \$8.800 Level I Site Investigation Level II Site Investigation SLT \$13,000 NTE \$400 Groundwater Management Permit Application **GMA** \$2,200 Supplemental Site Investigation SSI \$5,700 Initial Site Characterization ISC \$4.900 DCP Dissolved-Contaminant Plume/GMZ Delineation \$4,000 NTE \$325 Annual Summary Report GAS \$2.000 One Round of Groundwater Monitoring (1-5 MWs) \$1,200 + Wellhead Elevation Re-Survey \$450 + One Round Requiring Second Day \$400 + Additional Groundwater Monitoring (same round **GMP** \$130 6-10 MWs) + Additional Groundwater Monitoring (same round \$110 None >10 MWs) + Off-Site Private Water Supply Sampling (initial \$530 event per well) + Off-site Private Water Supply Sampling (2nd \$275 round per well) Project Transition-Single Project PTS \$1,300 Project Transition-Multiple Projects PTM \$1,100 Renewal of Groundwater Management Permit **GPR** \$1,000 NTE \$250 GMP Notification to Land Owner and Deed GPN \$1,200 \$2,200 Site Closure RAC NTE \$125

		Oil Fun	d Disbursement Board
Investigation, Remedial Action, Or Groundwater Monitoring	Phase Code (1)	NTE Budget	Electronic Submittal Increment (2)
Soil Excavation Plans & Bid Specifications	SPB	\$2,500	NTE \$400
Residential Indoor Air Sampling	RIA	\$2,300	
Sub-Slab Source Investigation for Residential OPUF	OSI	\$2,300	
Groundwater Quality Assessment for Residential OPUF	OGA	\$3,600	NTE \$325
Soil Delineation Sampling	SDS	\$3,300	
+Additional Day of Fieldwork	SDS	\$1,650	
Electronic Transmittal Monitoring Station Location & Setup (3)		\$450 - \$550	
Electronic Transmittal of Water Quality Monitoring Field Data (3)	As	\$150	
Electronic Transmittal of Water Quality Monitoring Lab Data (3)	Applicable	\$180	
Electronic Transmittal of Water Quality Monitoring Field & Laboratory Data (3)		\$330	None
MW Decommission or Road Box Replacement Coordination	WDC/RBR	\$300	
Environmental Monitoring for Soil Excavations	IRA	\$920	
Dig Safe Pre-Marking	DPM	\$400	
Free Product Recovery	FPR	\$3,500	NTE \$250
Enhanced Fluid Recovery	EFR	\$3,000	
Bid Administration	SBA	\$1,200	
Off-Site Access Agreements	OAA	\$400	NTE \$125
Initial Response Action Report Standard Form	IRR	\$600	NIE DIZO
Initial Response Action Report - Complex Site	IIXIX	\$1,200	

⁽¹⁾ DES Phase Code used to track and report corrective action costs. These codes should be used to identify proposed work and when requesting reimbursement.

⁽²⁾ Additional reimbursement amount available for electronic transmittal of a corrective action report

⁽³⁾ Amount available for up to 6 monitoring stations as an increment to any investigation or monitoring phase for electronic data transfer to DES. Up to \$550 for station setup, if using GPS locating with accuracy of <10 feet. Up to \$330, imcluding markup, for transmittal of field and laboratory data.

Table 2A. Project-Based Costs



Oil Fund Disbursement Board

Effective July 1, 2007

OPUF Contaminated Soil Excavation And Restoration, 5 Days Or Less In Duration	Phase Code (1)	Not-To-Exceed ("NTE") Budget	Electronic Submittal Increment (2)
Structural Engineering Assessment		\$1,200 per job	NTE \$400
Mobilization/Demobilization, incl. Site Visit + Dig Safe		\$1,684 lump sum	
Exterior Soil Excavation		\$2,984 per day	
Exterior Backfill and Site Restoration		\$2,118 per day	
Interior Soil Excavation (under floor or mobile home)		\$2,580 per day	
Interior Backfill and Site Restoration	IRA	\$2,536 per day	None
Contaminated Soil Load & Transport - Live Load		\$2,298 per day	
Contaminated Soil Load & Transport - Roll-Off Cans		\$1,134 per day	
Contaminated Soil Load & Transport - Vactor Truck		\$1,783 per day	

Effective August 23, 2006

POE System Installation & Maintenance	Phase Code (1)	NTE Budget	Electronic Submittal Increment (2)
POE Annual O&M		\$600 per system	
POE O&M Visit		\$300 per visit	NTE \$250
POE Site Evaluation		\$550 per site	
+ POE Installation Coordination		\$410 per site	
POE Maintenance Coordination		\$150 per event	
POE Carbon Change out		\$1,700 per system	
POE Carbon Installation (4 CF)	POE	\$3,200 per system	
POE Carbon Installation (6 CF)		\$4,000 per system	None
POE Carbon Installation (8 CF)		\$4,800 per system	140110
POE Pretreatment: Water Softener		\$1,800 per system	
POE Pretreatment: Air Stripper		\$5,200 per system	
POE Pretreatment: Iron Filter or Neutralizer	_	\$1,800 per system	

Project-Based Cost Notes:

NHDES will specify whether a Site Specific or Project-Based work scope is appropriate for the project. The Project-Based Cost work scope budgets include all labor, materials and equipment costs to complete the work category, with the exception of certain subcontractor costs. Laboratory and drilling costs shall not exceed the listed Unit-Based Costs, plus allowable markup. Reimbursement shall not exceed actual invoiced costs, paid or incurred less any discounts received. The Board expects that billed expenses will reflect the actual level-of-effort to complete the work.

For monitoring well or private water supply well sampling, each additional well cost increment includes prep time, travel, sampling and reporting. The cost for an initial private water supply sampling event assumes collection from a faucet and includes coordination, access, travel, sampling and reporting.

For OPUF 5-Day excavation projects, backfill and soil disposal costs are listed under the Unit-Based Costs.

POE Pretreatment Units are add-on units to a granular activated carbon (GAC) treatment system and are used to cleanse raw water and prolong the useful-life of the GAC system.

The service provider, subcontractor or vendor invoice may be considered the corrective action report for various services. Contact NHDES for reporting guidance.

⁽¹⁾ NHDES Phase Code used to track and report corrective action costs. These codes should be used to identify proposed work and when requesting reimbursement.

⁽²⁾ Additional reimbursement amount available for electronic transmittal of a corrective action report

Table 3. Allowable Markup



		N	lot-to-Exce	ed ("NTE	") 15º	% Markı	ир			NTE 10%	6 Markup		- 0
Service Provider	Contaminated Materials Disposal Facility (2)	Driller	Environmental Consultant, Geologist, or Engineer	Initial Response Action Contractor	Laboratory	Remediation General Contrator	Site Restoration Contractor - Not OSHA Certified (3)	Structural or GeoTecnhical Engineer	Police Detail	Project-Specific Materials & Supplies	Product Recovery & Remediation Systems	Utilities	Inventory Held for >30 Days - NTE 5% Markup
Environmental Consultant, Geologist, or Engineer performing:													
Initial Response Action at residential on- premise-use fuel oil (OPUF) facilities (1)	\checkmark	$\sqrt{}$		$\sqrt{}$	V		$\sqrt{}$	$\sqrt{}$	$\sqrt{}$	\checkmark	\checkmark	$\sqrt{}$	
Investigations & remediation plan development	1/	1			√			$\sqrt{}$	$\sqrt{}$	$\sqrt{}$			
Remediation system component installation	$\sqrt{}$	V			$\sqrt{}$				$\sqrt{}$	$\sqrt{}$	\checkmark		
Remediation system operation & maintenance	\checkmark				$\sqrt{}$					\checkmark	\checkmark	√	As Applicable
Initial Response Action Contractor (1)	V	V	√ (OPUF Only)		V		V	$\sqrt{}$	√	√	V	\checkmark	As App
Remediation General Contractor - Soil excavation & disposal, trenching & piping, system installation, system operation & maintenance	V	V			V		√		√	\checkmark	\checkmark	√	
Water Treatment System Provider - Bottled water, point-of-entry treatment system installation, system operation/maintenance	V				V		V	√		V		√	

General Notes:

Service providers may use subcontractors or vendors as indicated by a √ symbol, and charge applicable markup. Other subcontractor and vendor relationships may be established at the discretion of the fund-eligible party and service provider, but no markup is allowed. Reimbursement is limited to the actual cost of services, paid or incurred less any discounts received, plus markup.

NTE 15% markup applies for administration of subcontracted services. NTE 10% markup applies for certain vendor services. NTE 5% markup applies for project-specific inventory held more than 30 days and disposal facility insurance surcharges. No markup is allowed on any published Unit-Based Cost that is usual and customary for a service provider.

The Board and NHDES reserve the right to negotiate markup multipliers for large remediation projects, on a case-by-case basis.

⁽¹⁾ Either the Consultant, Geologist or Engineer, or an Initial Response Action Contractor, may act as the general contractor for performing Initial Response Action at on-premise-use facilities.

⁽²⁾ Contaminated materials disposal includes soils, liquids, and spent treatment media, and for consultant services, may also include drill cuttings, and well purge water.

⁽³⁾ Various site restoration services including paving, structural repairs and landscaping should be performed by specialty subcontractors.

WORKSCOPE AUTHORIZATION - Odb 407.01

Use this form (s) to obtain pre-approval from NHDES for performing corrective action at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E, F or G. Contact NHDES for guidance on use of this form and the need for additional documentation to describe the proposed work, particularly for RSA 146-G work. NOTE: You must receive prior approval even if private insurance is initially funding the work.



NOTE: You must receive prior approval even if private insurance is initially funding the work. **REIMBURSEMENT CANNOT BE AUTHORIZED IF A COMPLETE ESTIMATE IS NOT PRE-APPROVED BY DES** Facility Name: NHDES No.: UST/AST Fac. ID#: Location Address: Location Town: Project Type: Facility Owner:
Dates of Work: Project Phase: Consultant: Contractor: Task Summary: Unit Basis (1) # Units Description Rate (1) **Estimated Cost** Task total: Task Summary: Unit Basis (1) Description Rate (1) # Units **Estimated Cost** Task total: Task Summary: Unit Basis (1) Estimated Cost Description Rate (1) # Units

page 1 of 2

Task total:

Task Summary:					
Description	Unit Basis (2)	Rate (2)	# Units		Estimated Cost
				Task total:	
Task Summary:					
Description	Unit Desig (1)	Data (1)	#11=:4=		Estimated Cost
<u>Description</u>	Unit Basis (1)	Rate (1)	# Units		Estimated Cost
			<u> </u>	Task total:	
Tack Summany	Laboratory Analy	veie		lask total.	
rask Sullillary.	Laboratory Arian	ysis			
			DES App	roved 24 HR Turnar	ound?
Description	Unit Basis (1)	Rate (1)	# Units	Y/N	Estimated Cost
2000	0111124010 (17		<i>n</i> 00	1	2011110100
	Each				
				Task total:	
			Tot	al All Services:	
Owner's Representative:				_	
Owner's Representative:	(signature/	date)		-	
	(signature/			-	
Owner's Representative: NHDES Approval:	(signature/			-	
	(signature/	date)		-	
	(signature/ (signature/ on on applicable	date) unit-based co		- - s.	
NHDES Approval: (1) Refer to Section VI of the Guidance Manual for informatic Current rates are published on the ORCB web page in ad	(signature/ (signature/ on on applicable vance of Manual	date) unit-based co updates.	osts and rate		
NHDES Approval: (1) Refer to Section VI of the Guidance Manual for information	(signature/ (signature/ on on applicable vance of Manual to NHDES by: sement of oil disc	date) unit-based co updates. charge clean	osts and rate	mitted after April 4	

covered up to the limits of the homeowner's policy. To overcome this presumption, a written certification from the insurer that coverage does not extend to these costs under the terms of the policy and the reasons therefor must be submitted with the request.

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WORKSCOPE CHANGE ORDER AUTHORIZATION - Odb 407.01

Use this form(s) to obtain approval for a change order at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E, F or G. This form may be used for a Change Order to any approved work scope.



Facility Owner:			Original DES A	Project Type: Project Phase: Consultant:	
Change Order Summary:					
Description	Unit Basis (1)	Rate (1)	# Units		Estimated Cost
			01		
			_		
			Original A		
				New Total:	
	Unit Basis (1)	Rate (1)	Chang	ge Order Total: pproved Total: New Total:	Estimated Cost

(1) Refer to Section VI of the Guidance Manual for information on applicable unit-based costs and rates. Current rates are published on the ORCB web page in advance of Manual updates.

NHDES Approval:

OPUF WORKSCOPE AUTHORIZATION - Odb 407.01



				<u> </u>	Environmental Services		
Soil Excavation, Disposal	& Restoration - 5	Days or Le	ess	₹			
Facility Name:				NHDES No.:			
Location Address:			UST	AST Fac. ID#:			
Location Town:				Project Type:	OPUF		
Facility Owner: Dates of Work:			. •	Project Phase: Consultant:	IRA		
Dates of Work:			•	Consultant:			
Work Summary:							
Category	Unit Basis (1)	Rate (1)	# Units		NTE Cost		
Mobilization/Demobilization - incl.Site Visit + Dig Safe	LS	\$1,684					
Exterior Soil Excavation		\$2,984					
Exterior Backfill and Site Restoration		\$2,118					
Interior Soil Excavation (under floor or mobile home)		\$2,580					
Interior Backfill and Site Restoration	Day	\$2,536					
Contaminated Soil Load/Transport/Disposal - Live Load	- 7	\$2,298					
Contaminated Soil Load/Transport/Disposal - Roll-Off Cans		\$1,134					
Contaminated Soil Load/Transport/Disposal - Vactor Truck		\$1,783					
Environmental Monitoring		\$920					
Structural Engineering Assessment IRA Report	Job	\$1,200					
IKA Report	NTE	\$600		otomom: Totali			
Site Specfic Services (2)			C	ategory Total:			
Description	Unit Basis (1)	Rate (1)	# Units		Estimated Cost		
	01111 2 11 21 21 21 21	1 10.10 (17	•				
			Site	Specific Total:			
CONTAMINATED SOILS DISPOSAL & FILL MATE	RIALS - Subje	ct to Unit	-Based C	Costs For Ac	tual Quantities		
Laboratory Analysis			DES Ap	proved 24 HR Turn	around?		
Description	Unit Basis (1)	Rate (1)	# Units	Y/N	Estimated Cost		
VOC Full List (w/trip blank)		\$160					
Method 524.2 Drinking Water		\$150					
8270B or 8310 (PAH) 8015 DRO or GRO (TPH)		\$150 \$90					
Ignitability (1010)	Each	\$35					
VOC/TPH/Ignitability (for VPC soil disposal characterization)	Laui	\$260					
VOC/TPH/PAH		\$385					
VOC/TPH		\$225					
TCLP Metals (8 RCRA) and prep time		\$195					
			Lab	oratory Total:			
				I All Services:			
<u></u>							
NHDES Approval:							
	(signature/d	ate)					
(1) Rates indicated are as reported in Section VI of the Guidance M	anual. This is a No	t-to-Exceed	authorizatio	on			
only. Reimbursement is limited to actual costs charged to comple							
			Januario	arrup.			
Current rates are published on the ORCB web page in advance	•						
(2) Site-specific services/materials are limited to those specified in		ual.					
A report documenting the approved work must be provided to NHI	-						
Please be advised that for homeowner requests for reimbursement of oil discharge cleanup costs submitted after April 4, 2001, a							

presumption will be applied that the costs for investigation and remediation of groundwater and surface water contamination are covered up to the limits of the homeowner's policy. To overcome this presumption, a written certification from the insurer that coverage does not extend to these costs under the terms of the policy and the reasons therefor must be submitted with the request.

ENGINEER CERTIFICATION FOR PAYMENT OF CONTRACTOR WORK



The Engineer shall use this form to certify that Contractor work at sites eligible for the Petroleum Reimbursement Funds under RSA 146-D, E, F or G, was completed in accordance with all Contract Documents, approved work scopes, and is acceptable for payment. This form is only for use to support a Contractor reimbursement request and does not serve as a Remedial Action Plan Implementation Report.

CONTRACTOR WORK MUST BE CERTIFIED BY THE OVERSEEING ENGINEER

Facility/Project Name:		NHDES No.:					
Location Address: Location Town:		UST/AST Fac. ID#:					
Dates of Work:		Project Type:					
Description of Work including	ng Bid Item Number/Task as ap	propriate:					
Engineer's Name		Phone:					
Company Name							
Address							
Town		State:	Zip:				
provided in the Contractor's with the Contract Documents	ments, approved work scope(s reimbursement (payment) requ s, and the quality/function/perf entitled to payment in the amo	uest, I hereby certify the formance of the work is	he work was completed in acc				
Engineer:	(signature/date)	_					
	(- 3						

AFFIX NEW HAMPSHIRE PROFESSIONAL ENGINEERING LICENSE SEAL/STAMP BELOW:

SAMPLE COVER/TRANSMITTAL LETTER TO ACCOMPANY REIMBURSEMENT CLAIM

(DATE)

Joyce P. Bledsoe, P.G.
Fund Management Section
Oil Remediation & Compliance Bureau
NHDES – WMD
P.O. Box 95
Concord, NH 03302-0095

Re: [TOWN], [ADDRESS], [SITE/PROJECT NAME] Request for Reimbursement No. [NUMBER], [DOLLAR AMOUNT], NHDES No. [########]

Dear Ms. Bledsoe:

The [WORK DESCRIPTION] at the above referenced site is complete. Attached, please find the following documents in support of this reimbursement request:

- Request for Reimbursement Authorization [1st CORRECTIVE ACTION REQUEST FROM CURRENT OWNER & NEW OWNER OF FUND-ELIGIBLE FACILITY OR PROPERTY].
- Private Insurance Coverage Information [1ST CORRECTIVE ACTION REQUEST FOR RSA 146-D, RSA 146-E, OR RSA 146-F PETROLEUM STORAGE FACILITY]
- Facility or Property Ownership Transfer Information [1st REQUEST FROM NEW OWNER OF FUND-ELIGIBLE FACILITY OR PROPERTY].
- Facility Compliance Information [MAY BE NEEDED TO ESTABLISH ELIGIBILITY].
- Applicant Contract Including Waiver of Claims [NEEDED FOR ALL REQUESTS FOR PAYMENT TO AN "APPLICANT"].
- Listing of Invoices [NEEDED FOR ALL REQUESTS].
- NHDES Work Scope/Change Order Authorizations [NEEDED FOR ALL REQUESTS].
- Contractor [NEEDED FOR ALL REQUESTS] and Subcontractor Invoices [MAY BE NEEDED].
- Activity Reports Not Previously Submitted to NHDES [MAY BE NEEDED].
- Employee Payroll, Benefits, and Equipment Operating Cost Data for Work Performed by the Facility Owner [MAY BE NEEDED IF OWNER PERFORMS WORK].
- Waiver Request [MAY BE NEEDED, CONTACT PROGRAM STAFF].

The payment should be directed to:

[OWNER/"APPLICANT"/CO-PAYMENT/PAYEE – AS APPLICABLE] [ADDRESS] [TOWN/CITY, STATE ZIP]

Please call [NAME/the undersigned] at [PHONE NUMBER] if you have questions.

Sincerely,

[NAME, TITLE]
[COMPANY NAME]

REQUEST FOR REIMBURSEMENT AUTHORIZATION – RSA 146-D, RSA 146-E, RSA 146-F, Or RSA 146-G



A. AUTHORIZATION INFO	Oil Fund Disbursement Board				
(1) Type of Facility (check only one): Bulk Motor Fuel (LAST)	On-Premise-Use Fuel Oil (OPUF)				
Motor Fuel UST facility (LUST) Motor Oil Storage (M	OST) Bulk Fuel Oil (FUEL) Ether Project				
(2) Type of Authorization (check only one): First-Party Costs (Si	ite Cleanup) Third-Party Costs (Court Judgment)				
B. FACILITY INFORM	ATION				
(1) Facility Name (or residence name): (Complete Here)					
(2) Facility Address:					
(3) Facility Town:(4) Is this Facility Active or Permanently Closed?:					
(5) NHDES Facility Registration/Permit No., if applicable):					
(6) NHDES Project/Site No.:(7) Date of Discharge Discovery:					
C. OWNER/INSURANCE INFORMATION (S	See Instructions Notes 5&6)				
(1) Owner's Name:	(Complete Here)				
(2) Mailing Address:					
(3) Daytime Phone:					
(4) Are you a new owner since last authorization?:(5) No. of facilities owned in NH (of type checked above):	Yes Date of Acquisition: No				
(6) Is coverage available under other insurance?:	(Not Applicable for OPUF or Ether Project) Yes No Previously Determined				
D. OWNER'S LIABILITY STATEMENT AND AFFIRMATION					
I hereby certify that the facility referenced above is currently in compliance. I agree that I may be responsible for a "deductible" to be					
Thereby certify that the facility referenced above is currently in compliance. I agree that I may be responsible for a "deductible" to be applied against any amounts reimbursed to me from the fund. If reimbursement is made to an "applicant", I understand that I may be billed for the deductible amount and that I shall pay said amount within 30 days of the billing date, or shall arrange for periodic payments. I understand the funds under RSA 146-D, RSA 146-E and RSA 146-F, only provide excess insurance coverage.					
I declare that the representations made in this reimbursement auth I agree to reimburse the fund for any payments made to me based request information.	norization are to the best of my knowledge true and correct. I upon incorrect information on this form, or incorrect reimbursement				
NOTE: ONLY ORIGINAL SIGNATURE ACCEPTED Owner's Signature – Date Signed					
E. REIMBURSEMENT REQUEST SUBMITTAL INSTRUCTIONS					
(1) Complete this Request for Reimbursement Authorization form and include it with your first reimbursement request submittal. A separate authorization form is needed for first-party corrective action costs, and for third-party damage costs. A new authorization(s) is needed if facility/property ownership has changed.					
(2) Do not submit an authorization request if the facility is not in compliance with applicable requirements.					
for costs associated with facility closure or upgrading, or for v	ore discharge discovery, for costs associated with discharge discovery, work in progress – unless authorized by NHDES. See the rules of the and the Petroleum Reimbursement Fund Program Guidance Manual.				
(4) Include a cover/transmittal letter with each reimbursement request for each facility type in sequence. Refer to this request	nest that lists the information included in the request, and number each number when making a re-submittal.				

E. REIMBURSEMENT REQUEST SUBMITTAL INSTRUCTIONS

If you are the new owner of a facility/property, for which the previous owner was reimbursed, you must complete this form and include it with your first reimbursement request, checking the box labeled "Yes" under Section C., Item (4), and indicating the date of acquisition. You should ascertain that NHDES records such as the facility registration and groundwater permit were updated. If you are a former owner that previously submitted this form and received reimbursement, you do not need to re-submit the form if you transfer ownership to another party and continue corrective action under the terms of a facility/property transfer agreement. However, you must include a copy of the transfer agreement with your first reimbursement request submitted after the effective date of the agreement. The transfer agreement must state the former owner has an obligation to continue corrective action after transfer to a new owner.							
6) By law, the funds under RSA 146-D, RSA 146-E and RSA 146-F, only provide excess insurance to eligible facility owners. Therefore, you must exhaust any other insurance available to you for cleanup costs and/or third-party damages before you may be reimbursed from the funds. To demonstrate that you are eligible for reimbursement you must first submit a claim or request for coverage determination to your insurance carrier(s). Please attach the following documents to the initial authorization request for this facility, as applicable:							
(Check)							
a. A copy of the claim or request for coverage filed with all other insurance carriers for the facility/property.							
b. Copies of all responses from other insurance carriers regarding coverage determinations under other policies.							
c. Copies of Declaration of Coverage sheets and other information regarding policy coverage, policy limits and payments received from other insurance.							
If coverage under other insurance is available you must check the box labeled "Yes" under Section C., Item (6) of this form. If the information provided (see above C) indicates that the limits of coverage were reached, your reimbursement request(s) will be processed.							
You may check the box labeled "No" if the information provided (see above A and B) indicates coverage was denied. Your reimbursement request(s) will be processed.							
If the information provided indicates insurance coverage issues are not resolved, the Oil Fund Disbursement Board must approve a waiver for your reimbursement request(s) to be processed. Contact NHDES for further information regarding insurance coverage or discharge responsibility disputes.							
Requests for reimbursement authorization for third-party damage awards or settlements are subject to pre-notification procedures and submittal requirements specified in Odb 400.							
Return completed form(s) and reimbursement requests to:							
Joyce P. Bledsoe, P.G. NHDES – WMD 29 Hazen Drive, PO Box 95 Concord, NH 03302-0095							
If you have questions, call (603) 271-8740.							

NOTE: INCOMPLETE REQUESTS WILL BE RETURNED

NHDES#:	
Site/Project Name:	

REQUEST FOR REIMBURSEMENT - SUMMARY OF INVOICED COSTS (1)



												Oil Fund Disbursement Board
INV. (2)	INVOICE (2)	WSA#/	PHASE	REQ.	CONTRACTOR	SUB-CONTRACTOR	TASK	DESCRIPTION OF WORK	TASK	TASK BUDGET	AMOUNT	BUDGET BALANCE
DATE	INVOICE (2) NO.	DATE	CODE	NO.	(AS APPLICABLE)	(AS APPLICABLE)	NO.	DESCRIPTION OF WORK	% COMP.	(If Applicable)	REQUESTED	(If Applicable)
									 			
												_
									<u> </u>		i	
								Totals			1	
								Totals				

⁽¹⁾ Use this form or a facsimile to tabulate invoices and requested costs, and to indicate budget status, if applicable.(2) Only list invoice dates and invoice numbers for prime contractors. List subcontractor invoices and services under the applicable prime contractor invoice.

OIL FUND DISBURSEMENT BOARD POLICY STATEMENTS

1.) PETROLEUM FUND REIMBURSEMENTS TO TRANSFEREE OWNERS – November 21, 2005

A qualified transferee owner under RSA 146-D:6, I and I-a, RSA 146-E:6, VII or RSA 146-F:5, VIII, shall file written notice with the Board including the name of the transferee, mailing address, telephone number, and the effective date of petroleum storage facility or property transfer. Where facility registration and corrective action permits recorded with the Department of Environmental Services are applicable, the transferee owner shall also file an amended facility registration form and request for permit modification.

The Board will determine the fund deductible to be applied based on the number of facilities owned by the transferee owner when an initial reimbursement request is submitted. The transferee owner shall comply with insurance documentation requirements and all other provisions of the applicable statute and Board rules - reference N.H. Administrative Rule Odb 400.

2.) DELEGATION OF CERTAIN AUTHORITY - November 21, 2005

Item 1.

The Oil Fund Disbursement Board (Board) hereby authorizes the Department of Environmental Services ("NHDES") to pay uncontested Odb 400 first-party reimbursement requests that meet all of the Board regulatory criteria and do not involve a waiver, appeal, or reconsideration of a previous Board decision. NHDES shall submit a monthly report to the Board listing all requests approved during the previous month. NHDES shall consult with the Board, Board Chairman or designated Board members, on projects with significant facility compliance or corrective action circumstances.

Item 2.

The Oil Fund Disbursement Board hereby authorizes NHDES to pay first-party reimbursement requests under Odb 400, based on the total site-specific or project-based budget approved for each class, as follows:

- (a) Contaminated soil treatment, disposal, and restoration services
- (b) Contractor Services
- (c) Design & Construction Engineering (Gasoline Ether Fund)
- (d) Engineering and hydrogeology services;
- (e) Groundwater treatment and product recovery equipment, operation and maintenance services;
- (f) Laboratory services;
- (g) Other services
- (h) Point-of-Entry treatment
- (i) Subsurface exploration services; and
- (j) Water main/water well construction (Gasoline Ether Fund)

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE April 30, 2007 (Original 1/25/99, revised 8/25/03)

FROM Frederick J. McGarry, P.E., DEE AT (OFFICE) Waste

Assistant Director Management Division ("DES")

SUBJECT Limitations on Potential Bidders That Seek N.H. Petroleum Reimbursement

Fund Program Reimbursement

TO Kevin A. Sheppard, P.E., Chairman

Oil Fund Disbursement Board

Situation

DES currently works with several consulting firms who regularly design remediation systems, and prepare plans and specifications for the installation of the systems. Many of these design firms are also remediation system installers, so they expect to be able to bid on this work themselves. In addition, these consulting firms also expect DES to approve their firm as the construction oversight engineer, for whoever the contractor might be, including themselves. DES believes this situation can lead to a conflict of interest for the consulting firm and we have adopted an informal policy to disallow such practices. The purpose of this memorandum is to apprise the Board of the situation and seek an opinion regarding our position.

Discussion

Under a normal owner-engineer-contractor relationship, the engineer:

- a. Prepares the design plans and specifications for the work,
- b. Solicits bids on behalf of the owner.
- c. Recommends to the owner, and in this case DES, award of the contract to the lowest responsive and responsible bidder; and
- d. Oversees the work of the contractor, ensuring the work is in accordance with the design plans and specifications.

The engineer is expected to be an impartial third party, making sure the contractor provides a completed project in accordance with the bid documents, but not requiring the contractor to provide more than called for in the documents. In a situation where the design consultant is also allowed to be the contractor, there are numerous opportunities from bid preparation to construction oversight, for the consultant to be in a conflict of interest situation. Some of these situations are described below:

<u>Bidding Process</u> - The consultant, in preparing the bidding documents, is most familiar with the site and the bidding documents. He knows which items in the bid are of primary concern and those that are of lesser importance. Contractors, knowing the consultant's intention to be a bidder on the project, are less likely to spend the time and effort in preparing a bid knowing the engineer as a bidder is far more familiar with the work.

In preparing the bid, the engineer could include bid items that, based on his knowledge of the site, he is fairly certain will never be used. Consequently, when placed in the position as bidder on the work, he can bid \$0.00 or \$0.01 on those items. A contractor not as familiar with the site would likely place a realistic value for the item and consequently have a higher bid price than the engineer.

Evaluating the Bids - Assuming three bids are received, including that of the engineer, the engineer is then required to evaluate the three bids and recommend to DES to whom the contract should be awarded. This clearly is a conflict of interest. If there are any evaluations of the bidder other than price, i.e., experience and capabilities of the contractor and his subcontractors, the engineer's evaluation would be highly suspect if he recommended the contract be self-awarded. Although some consulting firms have a construction group separate from their engineering group, it is highly questionable that the engineer could be sufficiently insulated to be able to recommend to the client that they not hire his own company's construction group.

<u>Construction Oversight</u> - During construction oversight, the engineer is required to ensure the work is constructed in accordance with the plans and specifications and to review and approve change orders. If the engineer is now inspecting the work of his own firm, there is little to prevent the engineer from approving the use of marginal or substandard equipment or materials. The engineer would be hard pressed to reject work performed by his company's own forces, knowing the rejection of the work will mean extra cost to his firm and could result in punishment to the engineer.

Conversely, should a contractor other than the engineer be the successful low bidder, the engineer is in a position to "punish" the contractor for being successful on a bid the engineer attempted to obtain. The engineer could enforce an absolute literal interpretation of the specifications, costing the contractor money and likely delaying the work.

Current Status

Currently, DES has adopted an informal policy of prohibiting the engineer and any subsidiary of his company from bidding on work he has designed, or bidding on work where the engineer will also provide construction oversight. We have had several consultants object to this position, but none have sought to appeal the decision to either the Waste Management Council or the Board.

The only exception to this policy is for the installation of certain components of a remedial system that will be operated and maintained by the engineer. In such cases, the engineer is often best qualified to install specified (standard) components acquired from vendors, where no field fabrication is involved. An example of this would be a free product recovery system installation project where all the earthwork, electrical, equipment enclosure, recovery wells, or recovery trench work are bid, but standard product pump(s) and controls are installed by the engineer on a

"time and materials basis". DES requires that the engineer solicit vendor quotes for the recovery pumps and controls to demonstrate equipment cost control.

Recommendation

DES believes we have adopted the correct ethical policy with regard to this issue. To reduce the likelihood of appeals from consultants interested in bidding on their own designs, we request that the Board formerly adopt the DES position as standard policy. Under such a policy, a work scope for remedial system construction or oversight, based on a list of bidders that included the design consultant, would be rejected without review. Therefore, the costs associated with the construction of the system would not be reimbursable. Reimbursement for remedial equipment installed by the engineer on a time and materials basis would be limited to the actual cost of the equipment with not-to-exceed 10% mark-up allowed to cover carrying costs, subject to other applicable provisions of Board rules or policy.

Comment

In design-build construction, the engineer and the contractor work together in designing and building a remediation system. Selection of the design-build team is also subject to competitive bidding. The bidding process generally would occur upon the completion and approval of the Remedial Action Plan. We have not had many projects where a strict design-build concept has been adopted. The aforementioned policy would not preclude a design-build approach to site remediation, which may be of benefit in some situations.

STANDARD PUBLIC REQUEST FORM FOR REPLACEMENT PAGES

Oil Fund Disbursement Board Odb 100-600 Chapter/Part					
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Concord, N.H. 03302-0095

In

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Oil Fund Disbursement Board
Department Of Environmental Services
Waste Management Division
29 Hazen Drive
Concord, NH 03302-0095

CHAPTER Odb 100 OIL FUND DISBURSEMENT BOARD

Statutory Authority: RSA 541-A:16, I(a)

REVISION NOTE:

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 100. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 100 include the following documents:

#4759, eff 2-13-90 #5115, eff 4-16-91

PART Odb 101 DEFINITIONS

Odb 101.01 "Board" means the oil fund disbursement board established by RSA 146-D:4.

<u>Source</u>. (See Revision Note at chapter heading for Odb 100) #5534, eff 12-21-92; rpld by #6543, eff 7-22-97; ss by #8456, eff 10-25-05

Odb 101.02 "Confidential business information (CBI)" means information that is exempt from disclosure under RSA 91-A:5, IV, or information used in business that provides an advantage over competitors who do not know of or use it.

<u>Source.</u> (See Revision Note at chapter heading for Odb 100) #5534, eff 12-21-92; rpld by #6543, eff 7-22-97; ss by #8456, eff 10-25-05

PART Odb 102 BOARD ORGANIZATION

Odb 102.01 <u>Responsibilities.</u> The board shall administer the provisions of RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G.

Source. #8456, eff 10-25-05

Odb 102.02 Chairman and Vice Chairman.

- (a) The board shall elect a chairman and vice chairman from among its members at the first meeting of each calendar year.
- (b) The chairman shall preside at all meetings. In the absence of the chairman, the vice-chairman shall preside.

Source. #8456, eff 10-25-05

Odb 102.03 Office Hours, Office Location, Mailing Address and Telephone Number.

(a) The board's office location shall be at the:

New Hampshire Department of Environmental Services 29 Hazen Drive Concord, New Hampshire

- (b) The board's office shall be open to the public Monday through Friday, 8:00 am to 4:00 pm, excluding holidays.
 - (c) Correspondence shall be addressed to the board at:

Oil Fund Disbursement Board New Hampshire Department of Environmental Services Waste Management Division P.O. Box 95 Concord, N.H. 03302-0095

(d) The board's telephone number shall be (603) 271-3644.

Source. #8456, eff 10-25-05

PART Odb 103 MEETINGS AND DELIBERATIONS

Odb 103.01 <u>Meetings</u>. The chairman shall establish the date, time and location of meetings. Each member of the board shall be notified in writing of the date, time, location and agenda for meetings. Notice of meetings shall be posted at the board office, through the General Court calendar, on the department of environmental services website and in the Rulemaking Register, as applicable.

Source. #8456, eff 10-25-05

Odb 103.02 <u>Agenda and Meeting Record.</u> The board shall, through the department of environmental services, prepare a written agenda in advance of a meeting, record the proceedings, and prepare a written summary of proceedings.

Source. #8456, eff 10-25-05

Odb 103.03 <u>Procedures.</u> Robert's Rules of Order Newly Revised, 10th Edition shall govern the procedures of the board.

Source. #8456, eff 10-25-05

PART Odb 104 INFORMATION MANAGEMENT

Odb 104.01 Availability of Records.

- (a) All board records of meetings and official actions shall be public records unless deemed confidential under RSA 91-A:3, II or RSA 91-A:5.
- (b) Board records shall be available for public inspection during regular office hours, and with at least 48 hours notice.
- (c) Persons desiring copies of board records shall request the information being sought as clearly as possible.

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(d) Persons desiring a verbatim transcript of a board meeting recording shall agree to pay the costs incurred by the board for transcription.

Source. #8456, eff 10-25-05

Odb 104.02 Records Retention.

- (a) The board shall, through the department of environmental services maintain paper records of activity conducted under its authority in accordance with the following:
 - (1) Reimbursement records under Odb 400 for corrective action shall be maintained for 30 days after the action date when the approved amount is equal to the requested amount, and for 180 days after the action date when the approved amount is less than the requested amount; and
 - (2) Records of activity under Odb 200, reimbursement records under Odb 400 for third-party damages, and records of board meetings shall be maintained for 3 years after the action date or meeting.
- (b) The board shall, through the department of environmental services, maintain electronic records of activity conducted under its authority for an indefinite time period.

Source. #8456, eff 10-25-05

PART Odb 105 CLAIMS OF CONFIDENTIALITY

Odb 105.01 Procedure for Making a Claim of Confidentiality.

- (a) Any person claiming that information submitted to the board under Odb 200 or Odb 400 is CBI, shall assert that claim at the time the information is initially submitted by stamping or otherwise marking each page of such information with the notation "confidential" or "confidential business information". If the claimant believes that only part of the information on a page is CBI, the claimant shall identify all portions to which the claim applies at the time of submission, and shall designate only that portion of the page as "confidential" or "confidential business information".
- (b) If the board receives information from another agency of the state or federal government that is designated as CBI, the board shall exercise the same degree of confidentiality for the information as is exercised by the sending agency to the extent authorized by New Hampshire law.
- (c) If a claim of confidentiality is made for any information that falls within any category identified in Odb 105.02, the information shall not be treated as confidential.

Source. #8456, eff 10-25-05

Odb 105.02 Non-Confidential Information.

- (a) Any information for which no claim of confidentiality was made at the time of the initial submission shall not be considered confidential.
- (b) Comments submitted by any person during the public comment period of any administrative proceeding shall not be considered confidential.
 - (c) Information that is in the public domain shall not be considered confidential.
- (d) Information that demonstrates a claimant violated any statute or rule administered by the board shall not be confidential.

Source. #8456, eff 10-25-05

Odb 105.03 <u>Release of Information</u>. The board shall release information not identified as CBI, in accordance with RSA 91-A:4, IV.

Source. #8456, eff 10-25-05

CHAPTER Odb 200 OIL FUND DISBURSEMENT BOARD PROCEDURES

REVISION NOTE

Document #5534, effective 12-21-92, made extensive changes to the wording, structure, and numbering of rules in Chapter Odb 200. Document #5534 supersedes all prior filings for the sections in this chapter. The prior filings for former Chapter Odb 200 include the following documents:

#4760, eff 2-13-90 #5115, eff 4-16-91

Statutory Authority: RSA 146-D:5, I, RSA 146-E:6, I , RSA 146-F:5, I, RSA 146-G:11 and RSA 541-A:16, I(b)

PART Odb 201 PURPOSE AND APPLICABILITY

Odb 201.01 Purpose.

- (a) The purpose of this chapter is to provide uniform procedures for the conduct of all non-adjudicative and adjudicative proceedings, including requests for reconsideration, declaratory rulings, rulemaking petitions, and hearings in contested cases.
- (b) This chapter is intended to supplement the procedures established by RSA 541-A and any procedures or criteria established under any statute implemented by the oil fund disbursement board.

<u>Source.</u> (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97, EXPIRED: 7-22-05

New. #8490-A, eff 11-22-05

Odb 201.02 Applicability.

- (a) The procedures set forth in this chapter shall apply to all proceedings conducted by the oil fund disbursement board, and shall be in addition to any applicable requirements of RSA 541-A.
 - (b) All board proceedings shall be subject to the provisions of RSA 91-A.

Source. (See Revision Note at chapter heading for Odb 200) #5534, eff 12-21-92; ss by #6543, eff 7-22-97, EXPIRED: 7-22-05

New. #8490-A, eff 11-22-05

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PART Odb 202 DEFINITIONS

Odb 202.01 <u>Definitions</u>.

(a) "Board" means the oil fund disbursement board established by RSA 146-D:4.

- (b) "Department" means the New Hampshire department of environmental services.
- (c) "Presiding officer" means the chairman of the board. In the absence of the chairman, the vice chairman shall act as the presiding officer.

Source. (See Revision Note at chapter heading Odb 200) #5534, eff 12-21-92, EXPIRED: 12-21-2000

New. #8490-A, eff 11-22-05

PART Odb 203 HEARINGS IN CONTESTED CASES

Odb 203.01 <u>Waiver of Rules</u>. Prior to the commencement of hearing procedures, any party may submit a written request to waive the application of any of the hearing rules of this part not required by statute. If no party objects to the request, and if the board determines that granting the request is necessary to conduct a more efficient hearing, then the rule or rules shall be waived and so noted in the hearing record.

Source. #8490-A, eff 11-22-05

Odb 203.02 Request for Hearing.

- (a) Any person aggrieved by a decision of the board or the department may request a hearing within 30 days of the decision notification date. Such requests shall include a statement of the relief sought and the rule or statutory provision under which the relief is sought.
- (b) The board shall establish a date and time for a hearing, and provide notice in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 203.03 <u>Place of Hearings</u>. All hearings before the board shall be held at a location designated by the board and notice shall be provided in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 203.04 <u>Computation of Time</u>. All time periods referenced in this chapter shall be calendar days, commencing with the first day following the date of an action. If the last day of the time period falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. #8490-A, eff 11-22-05

Odb 203.05 Extensions of Time.

- (a) Any party requesting a hearing may petition the board to extend any time limit prescribed by this chapter for good cause as specified in (d) below. A request for an extension shall be submitted in writing to the board prior to the expiration of the prescribed period and shall state the reasons for the extension request. A copy of the request shall also be sent to all other parties involved.
- (b) The department or any other party may object to the request by filing a written objection with the board within 5 days of receipt of the request, stating the reasons why the request should not be granted.
- (c) If there is no opposition to the request and if the delay would not cause prejudice, the presiding officer shall grant the request. If an objection to a request is filed, the presiding officer shall consider whether good cause exists to grant the request and shall rule on the request within a reasonable time.

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- (d) Good cause shall include such contingencies as an accident, sudden illness, death of a family member, or other circumstances beyond the control of the party, which prevents the party from meeting the time limit.
 - (e) The board shall notify all parties of board actions through the department.

Source. #8490-A, eff 11-22-05

Odb 203.06 <u>Date of Filing</u>. All exhibits, findings of fact, correspondence, motions, petitions, applications and any other documents governed by this part, shall be deemed to have been filed with or received by the board on the actual date of receipt by the board.

Source. #8490-A, eff 11-22-05

Odb 203.07 <u>Identification of Communications</u>. Communications shall contain the name and address of the communicator and the subject of the communication. When the subject matter pertains to a pending proceeding, the title of the proceeding shall be given.

Source. #8490-A, eff 11-22-05

Odb 203.08 <u>Appearance Before the Board</u>. Appearances may be entered either in writing or upon the record of the hearing. Other persons, not parties to a proceeding but having an interest in the subject matter of the proceeding, may participate in the hearing to the extent that they are able to establish an interest, other than that of the public generally, in the subject matter of the proceeding.

Source. #8490-A, eff 11-22-05

Odb 203.09 <u>Representatives</u>. Any party to a hearing before the board may be represented by an individual as that party may designate, in accordance with Odb 203.08.

Source. #8490-A, eff 11-22-05

Odb 203.10 <u>Notice of Hearings</u>. When a hearing is scheduled, notice shall be provided in writing, to all parties or other interested persons, at least 15 days prior to the hearing date. The notice shall specify the date, time, place and subject matter of the hearing.

Source. #8490-A, eff 11-22-05

Odb 203.11 <u>Hearing Record</u>. The record of the hearing shall consist of a verbatim recording of the hearing, documentary evidence introduced by the parties and documents of which official notice has been taken by the board.

Source. #8490-A, eff 11-22-05

Odb 203.12 Retention of Board Decisions.

- (a) Subject to (b), below, the board shall maintain on file such written decisions or orders as are issued pursuant to RSA 541-A:35 as follows:
 - (1) For decisions that are not appealed, for no less than 3 years from the date of the decision or order; and
 - (2) For decisions that are appealed, for no less than 3 years from the date of the final decision on appeal.

(b) If the director of the division of records management and archives of the New Hampshire department of state sets a retention period, pursuant to rules adopted under RSA 5:40, for written decisions or orders issued pursuant to RSA 541-A:35 of longer than 3 years, the board shall maintain such written decisions or orders on file for such longer period.

Source. #8490-A, eff 11-22-05

Odb 203.13 Hearing Procedures.

- (a) The presiding officer shall:
 - (1) Regulate the course of the hearing;
 - (2) Rule upon issues of procedure; and
 - (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.
- (b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.
- (c) Any person appearing before the board shall be required to state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

Source. #8490-A, eff 11-22-05

Odb 203.14 Burden and Standard of Proof.

- (a) The party asserting a proposition or challenging a decision of the board shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.
- (b) For purposes of this section, "proving the truth of the proposition by a preponderance of the evidence" means what is sought to be proved is more probable than not.

Source. #8490-A, eff 11-22-05

Odb 203.15 Pre-Hearing Exchange of Information.

- (a) At least 10 days prior to the commencement of a hearing, the parties involved shall provide the board with the following:
 - (1) A list identifying each witness expected to be called at the hearing with a brief description of that witness's testimony;
 - (2) A list of all exhibits expected to be presented at the hearing; and
 - (3) Any requests for changes to or waivers of the standard procedures as specified in this chapter or other matters concerning the conduct of the hearing.
- (b) If the board requests information other than that specified in (a), above, from the parties involved, the board shall provide written notice to the parties.
- (c) A party receiving a request for information pursuant to (b), above, shall provide the information requested within 10 days.

Source. #8490-A, eff 11-22-05

Odb 203.16 Documentary Evidence.

- (a) Evidence, which is relevant and material to the subject matter of the hearing, shall be admissible. Evidence, which is irrelevant, immaterial, or unduly repetitious, shall be excluded.
- (b) The board shall include in its final decision those facts of which it took official notice unless those facts are included in the transcript of the record.
- (c) All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence shall be received in the form of copies or excerpts if the original is not readily available. Any person offering any documentary or photographic evidence shall provide the board with 20 copies of such documents or photographs, unless the presiding officer determines that such documents or photographs are of such form, size or character as not to be reasonably suitable for reproduction.
- (d) All written statements and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. Following the hearing, all such evidence shall be available at the board's office in Concord during normal business hours.
- (e) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. Nothing herein shall be construed to permit interlocutory appeal of rulings of the presiding officer.

Source. #8490-A, eff 11-22-05

Odb 203.17 Exhibits.

- (a) Where evidence to be presented consists of tabulations and figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.
- (b) Space shall be provided in the upper right hand corner of each such exhibit for the insertion of the number of the exhibit and the name of the witness through whom it is presented.
- (c) The original exhibit and 20 copies thereof shall be provided to the board and at least 1 copy shall be provided to all other parties.

Source. #8490-A, eff 11-22-05

Odb 203.18 <u>Advance Filing of Exhibits</u>. Any party intending to use exhibits shall file an original and 20 copies thereof with the board at least 15 days prior to the hearing at which such exhibits are to be introduced.

Source. #8490-A, eff 11-22-05

Odb 203.19 <u>Signatures</u>. Every application, exhibit, notice, motion, petition, complaint, brief and memorandum shall be signed by the person filing the document, or by one or more attorneys in their individual names or by other duly designated representative on behalf of the person filing the document.

Source. #8490-A, eff 11-22-05

Odb 203.20 Continuance.

- (a) Any party may request that a hearing conducted pursuant to this Part be continued for reasonable cause and reconvened or rescheduled. Reasonable cause shall include, but not be limited to, unavailability of an individual party or a representative or critical documents.
- (b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason(s) for the request. Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.
- (c) If the presiding officer determines that reasonable cause exists and that no prejudice will result from the delay, the presiding officer shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened.
- (d) The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Odb 203.21 <u>Recess and Adjournment</u>. The presiding officer shall, from time to time, at the request of any party or members of the board, recess or adjourn any hearings as may be necessary to the orderly conduct of the proceeding.

Odb 203.22 Conclusion of Hearing.

- (a) Prior to the conclusion of the hearing, the presiding officer shall, upon request and at his or her discretion, direct that the record be left open for a specified period of time to accommodate the filing of documents not available at the hearing.
- (b) If the presiding officer determines that such documents are necessary to a full consideration of the subject matter, the presiding officer shall set a date by which the additional documents shall be filed.

Odb 203.23 Reopening of the Record.

- (a) At any time prior to a final decision, any party to a hearing may request the presiding officer to reopen the record to consider documents or arguments not previously considered.
- (b) If the presiding officer determines that such documents or arguments are necessary to a full consideration of the subject matter of the hearing, the presiding officer shall reopen the record and written notice shall be given to all parties.

Odb 203.24 <u>Decision of Board</u>. Following the conclusion of a hearing, or the closing of the record, the board shall issue a notice of decision to all parties through the department.

Odb 203.25 Withdrawal of a Presiding Officer.

(a) Any interested party may submit a request to the board for the withdrawal of the presiding officer from a matter for good cause.

- (b) For purposes of this section, good cause for withdrawal shall be that the presiding officer has an objectively demonstrated bias for or against one or more of the parties. Good cause shall not include that the presiding officer is an employee of the department.
- (c) The party requesting the withdrawal of the presiding officer shall support the request with sworn testimony or other evidence submitted with the motion.
- (d) For purposes of this section, an "objectively-demonstrated bias" means that the party requesting the presiding officer to withdraw submits evidence that shows, by a preponderance of the evidence, that the presiding officer has had personal dealings with a party to the proceeding that would cause a reasonable person to believe that as a result of the dealings, the presiding officer will discount or ignore evidence and law to find in favor of or against the party.
 - (e) The board shall consider the request and make a determination within a reasonable time.

Source. #8490-A, eff 11-22-05

Odb 203.26 <u>Roles in Adjudicative Proceedings</u>. In any adjudicative hearing, department staff may be called as witnesses by the board or any party to the hearing to present testimony and evidence as requested.

Source. #8490-A, eff 11-22-05

PART Odb 204 NON-ADJUDICATIVE PUBLIC HEARINGS

Odb 204.01 <u>Applicability</u>. With the exception of rulemaking hearings under Odb 205, this part shall apply to the conduct of hearings held by the board to provide information and receive public comment in any matter that is not a contested case as defined by RSA 541-A:1, IV.

Source. #8490-B, eff 11-22-05

Odb 204.02 Hearings. A non-adjudicative public hearing shall be held:

- (a) To receive evidence and testimony on reimbursement determinations and other matters required by the statute or rules;
- (b) For any matter for which the board is required by law or by these rules to hold a hearing that is not a contested case; and
- (c) For any matter for which the law does not require the board to hold a hearing but for which the board believes a public hearing would be of benefit.

Source. #8490-B, eff 11-22-05

Odb 204.03 Record.

- (a) A record of the hearing shall be kept by tape recording or other method, which will provide a verbatim record.
- (b) Copies of the recording shall be provided to any person upon request and payment of the costs of the tape(s) and staff time to make the copy, or of staff time only if enough blank tapes to copy the hearing tape(s) are submitted with the request.

(c) If any person desires a transcript of the hearing tape(s), the board shall prepare or cause to be prepared a transcript provided the cost of the transcription is paid by the person(s) requesting the transcript. If the department hires another person to prepare the transcript, the person requesting the transcript shall be billed directly by and shall directly pay the person preparing the transcript.

Source. #8490-B, eff 11-22-05

Odb 204.04 Testimony.

- (a) Any individual wishing to submit written testimony or exhibit(s) at a non-adjudicative public hearing shall do so to the presiding officer, provided the individual signs and dates such testimony or exhibit(s).
- (b) Any individual wishing to testify at a non-adjudicative public hearing shall submit his/her name, address, and whom s/he represents, if anyone, in writing to the presiding officer. The presiding officer shall call each individual to present his/her testimony. The presiding officer shall encourage individuals who plan to testify orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.
- (c) At the conclusion of testimony of each individual, the individual shall remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.
- (d) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #8490-B, eff 11-22-05

Odb 204.05 Closing the Hearing and the Record.

- (a) The presiding officer shall close the hearing when s/he determines that no one has further questions or comments that are relevant to the subject of the hearing.
- (b) At a non-adjudicative public hearing other than a rulemaking hearing, if additional time is requested to submit written testimony as specified in Odb 205.04(b) or supplemental information which the presiding officer determines to be relevant to the subject of the hearing, s/he shall designate a specific time period for the record to remain open to receive such information.

Source. #8490-B, eff 11-22-05

Odb 204.06 Continuances.

- (a) At any non-adjudicative public hearing, if anyone requests a continuance and the presiding officer determines that the public will be best served by continuing the hearing and that any prejudice caused to any person as a result of the continuance is outweighed by the benefit to the public of granting the continuance, the presiding officer shall order that the hearing be continued to a later date, time, and place.
- (b) If such later date, time, and place are known at the time of the hearing that is being continued, the presiding officer shall state the date, time, and place on the record.
- (c) If such later date, time, and place are not known at the time of the hearing that is being continued, the presiding officer shall state how notice will be given of the date, time, and place of the continued hearing.

Source. #8490-B, eff 11-22-05

PART Odb 205 RULEMAKING HEARINGS

Odb 205.01 <u>Public Hearing</u>. The board shall hold a public hearing when proposing to adopt, readopt, amend or repeal rules.

Source. #8490-A, eff 11-22-05

Odb 205.02 <u>Notice of Hearing.</u> The board shall provide notice for a public hearing in accordance with Odb 203.10.

Source. #8490-A, eff 11-22-05

Odb 205.03 Record. A record of the public hearing shall be kept by verbatim recording.

Source. #8490-A, eff 11-22-05

Odb 205.04 Hearing Procedures.

- (a) The presiding officer shall:
 - (1) Regulate the course of the hearing;
 - (2) Rule upon issues of procedure; and
 - (3) Take such other action that is necessary for the efficient and orderly conduct of the hearing.
- (b) The presiding officer shall open the hearing by describing the general terms, the purpose of the hearing and the general procedure governing its conduct.
- (c) Any person providing oral testimony shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.
- (d) Any person wishing to submit written testimony shall do so to the presiding officer provided the person signs and dates such testimony.
- (e) The presiding officer shall call each person to present testimony and encourage persons testifying orally to place their testimony in writing and to submit such written testimony to the presiding officer prior to the close of the record.
- (f) At the conclusion of testimony of each person, the presiding officer shall encourage the person to remain available to answer questions from the presiding officer, who shall only ask such questions as are necessary to clarify the testimony given.
- (g) The presiding officer shall terminate any comments, questions, or discussions that are not relevant to the subject of the hearing.

Source. #8490-A, eff 11-22-05

Odb 205.05 Closing the Hearing and the Record.

- (a) The presiding officer shall close the hearing upon determining there are no further questions or comments that are relevant to the subject of the hearing.
- (b) The record shall remain open until the date specified in the notice published in the New Hampshire Rulemaking Register.

Source. #8490-A, eff 11-22-05

PART Odb 206 RULEMAKING PETITIONS

Odb 206.01 <u>Filing</u>. Any person wishing to file a rulemaking petition shall file the original and one copy of the petition with the board.

Source. #8490-A, eff 11-22-05

Odb 206.02 <u>Format and Content of Petition</u>. A person filing a petition to adopt, amend, or repeal a rule shall provide the following information:

- (a) The exact legal name of each person requesting the adoption, amendment, or repeal of the rule, with a residence address or principal place of business of the person;
 - (b) Whether the person is asking the board to adopt, amend, or repeal a rule;
 - (c) If the petition is to adopt a rule:
 - (1) The chapter, part, and section, by alphanumeric code, where the person proposes the rule language to be inserted; and
 - (2) The proposed rule language;
 - (d) If the petition is to amend a rule:
 - (1) The specific rule, by alphanumeric code, that is the subject of the petition; and
 - (2) The proposed rule language;
- (e) If the petition is to repeal a rule, the specific rule, by alphanumeric code, that is the subject of the petition;
- (f) A written statement of why the petitioner wants the board to undertake the action requested and how the action is consistent wit RSA 146-D, RSA 146-E, RSA 146-F, RSA 146-G or RSA 541-A, as applicable; and
- (g) Such other information the person filing the petition deems pertinent and relevant to their request, including written testimony.

Source. #8490-A, eff 11-22-05

Odb 206.03 Board Review.

- (a) Upon receipt of a petition to adopt, amend, or repeal a rule, the board shall proceed in accordance with RSA 541-A: 4, I.
- (b) The petition shall be granted and a rulemaking proceeding shall be initiated if the board determines that the proposed action is:
 - (1) Consistent with state and federal law and policy; and
 - (2) In the best interests of the state.

Source. #8490-A, eff 11-22-05

PART Odb 207 REQUESTS FOR RULE EXPLANATION

Odb 207.01 Request for Rule Explanation.

- (a) Any person may request, at any time before 30 days after the final adoption of the rule, that the board issue an explanation of a rule by filing an original and one copy of the request.
 - (b) The request shall include:
 - (1) The chapter, part or section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s) which is the subject of the request; and
 - (2) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents.

Source. #8490-B, eff 11-22-05

PART Odb 208 PETITION FOR DECLARATORY RULING

Odb 208.01 <u>Applicability</u>. Any interested person may submit a petition for a declaratory ruling on the applicability of any statute, rule, or order administered or enforced by the board. The rules in this part shall apply to any petition for such ruling.

Source. #8490-A, eff 11-22-05

Odb 208.02 <u>Filing</u>. The original and one copy of a petition for a declaratory ruling shall be filed with the board.

Source. #8490-A, eff 11-22-05

Odb 208.03 Format and Content of Petitions. Petitions for rulings shall include the following:

- (a) The legal name of each person requesting the action, with a resident address or principal place of business of the person;
- (b) The chapter, part, section, or paragraph, by alphanumeric code, of the rule(s), statutory provision(s), or order(s), which is the subject of the request;
 - (c) The petitioner's signature and date signed;
- (d) Any other information as the person filing the petition deems pertinent and relevant, including attachments, illustrations, and other written documents; and
- (e) A concise and explicit statement of why the petitioner wants the board to rule on the statutory provision, rule or order.

Source. #8490-A, eff 11-22-05

Odb 208.04 Processing of Petitions.

- (a) If the board determines that the petition is deficient, the board shall notify the petitioner within 30 days, in writing, of the specific deficiencies and allow the petitioner to amend the petition.
 - (b) The board shall take one of the following actions in response to a petition:
 - (1) Issue a ruling responsive to the petition within 90 days; or

(2) If deemed necessary, request the opinion of the department of justice and issue a ruling within 90 days following receipt of the department of justice opinion.

Source. #8490-A, eff 11-22-05

PART Odb 209 WAIVER OF IMPORT FEE PENALTIES AND INTEREST

Odb 209.01 Waiver of Import Fee Penalties And Interest.

- (a) A distributor as defined in RSA 146-D:2, I, may request the board to waive penalties under RSA 146-D:3, III and RSA 146-E:3, II, or penalties and interest under RSA 146-F:3, II.
- (b) The board shall approve a waiver of penalties no more than once in a 12-month period upon finding a distributor filed timely reports for the past 11 months prior to a late report filing.
- (c) The board shall approve a waiver of penalties and interest, as permitted by statute upon finding the assessment was based on department of safety error.
- (d) The board shall approve a waiver of penalties assessed through voluntary late reporting or department of safety audit, upon finding the circumstances were beyond the reasonable knowledge or control of the distributor.
- (e) The board shall provide written notice of its decision to the party requesting the waiver within a reasonable time.

Source. #8490-B, eff 11-22-05

CHAPTER Odb 300 - REPEALED

<u>Source.</u> #4761, eff 02-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 400 RULES FOR REIMBURSEMENT UNDER RSA 146-D, RSA 146-E, RSA 146-F AND RSA 146-G

Statutory Authority: RSA 146-D:5, I; RSA 146-E:6, I, RSA 146-F:5, I, and RSA 146-G:11

PART Odb 401 PURPOSE AND SCOPE

Odb 401.01 <u>Purpose</u>. The purpose of this chapter is to establish procedures for reimbursement under RSA 146-D, RSA 146-E, RSA 146-F and RSA 146-G.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97; EXPIRED: 7-22-05

New. #8491, eff 11-22-05

Odb 401.02 <u>Applicability</u>. This chapter shall apply to reimbursement for costs incurred on or after the effective date of this chapter.

<u>Source.</u> #4762, eff 2-13-90; ss by #5115, eff 4-16-91; ss by #5534, eff 12-21-92; ss by #6543, eff 7-22-97; EXPIRED: 7-22-05

New. #8491, eff 11-22-05

PART Odb 402 DEFINITIONS

Odb 402.01 Definitions.

- (a) "Applicant" means a person who performs corrective action, public water supply gasoline ether monitoring under Env-Ws 300, or notification under RSA 485:16-a, II, under contract with an owner.
 - (b) "Board" means the oil fund disbursement board established by RSA 146-D:4.
- (c) "Bodily injury costs" means damages proven by expert medical testimony as to diagnosable personal injury, illness, or other bodily injury, including emotional distress accompanied by physical manifestations suffered by a party other than an owner or its agents as a result of a discharge.
- (d) "Capital equipment" means electronic, chemical, mechanical or structural equipment installed to perform contamination source removal or treatment, which has a long-term life greater than 2 years and has an initial value or purchase cost, either individually or as an aggregate, of \$10,000.00 or more.
- (e) "Compliance" means conformance with applicable local, state and federal facility operating requirements, or having an approved compliance schedule for potential contamination sources defined in RSA 485-C:7. II.
 - (f) "Contamination" means "contamination" as defined in Env-Wm 1601.03(g).
- (g) "Contract" means a formal written agreement that specifies the service performed and the terms and conditions of the service.
- (h) "Corrective action" means activities performed in accordance with RSA 146-G or department rules to contain a discharge or remedy contamination.
- (i) "Corrective action report" means a report on site conditions or cleanup submitted in accordance with department rules.
- (j) "Deductible" means initial costs incurred for which an owner is liable to the fund under RSA 146-D:6, II or RSA 146-E:6, I.
 - (k) "Department" means the New Hampshire department of environmental services.
 - (l) "Discharge" means a spill or release of oil, fuel oil, motor oil, gasoline, or gasoline ethers.
 - (m) "Facility" means:
 - (1) A "bulk storage facility" as defined in RSA 146-D:2, V or RSA 146-E:2, I;
 - (2) An "on-premise-use facility" as defined in RSA 146-E:2, III;
 - (3) A "motor oil storage facility" as defined in RSA 146-F:2, II;
 - (4) An "underground storage facility" as defined in RSA 146-D:2,II; or
 - (5) "Potential contamination sources" as defined in RSA 485-C:7, II, as applicable.

- (n) "Financial statement" means a complete accounting of a facility owner's financial condition prepared in accordance with generally accepted accounting practices or standards including a statement of assets and liabilities, income statement, statement of cash flows, and statement of whether the owner is creditworthy.
- (o) "Fund" means the oil discharge and disposal cleanup fund established by RSA 146-D, the fuel oil discharge cleanup fund established by RSA 146-E, the motor oil discharge cleanup fund established by RSA 146-F, or the gasoline remediation and elimination of ethers fund established by RSA 146-G, as applicable.
- (p) "Other insurance" means private insurance coverage for corrective action and third-party damage costs that is valid and collectible by the owner, and includes private insurance held by the owner through either a wholly-owned or jointly-owned subsidiary in the business of providing insurance coverage to the owner or to the owner and others.
- (q) "Owner" means the person in possession of or having legal ownership of a facility, land under RSA 146-E:6, I or RSA 146-F:5, I, public water supply system, non-public water supply system, private water supply or other eligible party under RSA 146-G.
- (r) "Performance standard" means an expected level of completeness, quality, and/or reduction in measurable contamination when performing corrective action in accordance with RSA 146-G or department rules.
- (s) "Person" means any individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, limited liability company, state and agencies thereof, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, the United States government and agencies thereof, and any other legal entity.
- (t) "Property damage" means physical damage to, or loss of use of, tangible property owned by a party other than the facility owner or his/her employees.
 - (u) "Reimbursement" means an assignment of money from the fund
 - (v) "Service cost summary" means a statement of reimbursable costs suitable for electronic filing.
 - (w) "Site" means "site" as defined in Env-Wm 1601.03(ab)
- (x) "Third-party damages" means damages, which are an obligation of an owner as a result of a court-approved settlement or judgment in a civil action against the owner by a party who has suffered bodily injury or property damage as defined in this part.

Source. #8491, eff 11-22-05

PART Odb 403 REIMBURSEMENT REQUEST DOCUMENTS

Odb 403.01 Service Cost Summary for Electronic Filing.

- (a) An owner or applicant submitting a service cost summary for electronic filing of a reimbursement request shall include the following information, as applicable:
 - (1) Summary description of the work performed;
 - (2) Identification of work category and the department phase code;
 - (3) Listing of bid items or tasks;
 - (4) Identification of contractors, subcontractors and vendors;

- (5) Classification/description of work, department class code, units, unit type, unit rate, and total cost;
- (6) Total costs for each class;
- (7) Total cost for each task; and
- (8) Total cost for each phase.

Source. #8491, eff 11-22-05

Odb 403.02 Reimbursement Authorization Form.

- (a) Reimbursement authorization forms shall be those provided by the board.
- (b) An owner or applicant submitting a reimbursement authorization form shall include the following information:
 - (1) Authorization information including the type of facility or project and whether reimbursement is sought for corrective action costs or third-party damages;
 - (2) Facility or project information including:
 - a. Facility or project name;
 - b. Address;
 - c. Location town;
 - d. The department facility identification number if applicable;
 - e. The department project number; and
 - f. The date of discharge discovery at a facility if applicable;
 - (3) Owner and insurance information including:
 - a. Owner name;
 - b. Mailing address;
 - c. Daytime phone number;
 - d. Whether the owner is a new owner since the last authorization;
 - e. Number of facilities owned if applicable; and
 - f. Whether other insurance coverage is available; and
 - (4) The owner's signature and date certifying the following liability statement and affirmation: "I hereby certify that the facility referenced above is currently in compliance. I agree that I may be responsible for a 'deductible' to be applied against any amounts reimbursed to me from the fund. If reimbursement is made to an 'applicant', I understand that I may be billed for the deductible amount and that I shall pay said amount within 30 days of the billing date, or shall arrange for periodic payments. I understand the funds under RSA 146-D, RSA 146-E and RSA 146-F only provide excess insurance coverage. I declare that the representations made in this reimbursement

authorization are to the best of my knowledge true and correct. I agree to reimburse the fund for any payments made to me based upon incorrect information on this form, or incorrect reimbursement submittal information".

Source. #8491, eff 11-22-05

PART Odb 404 REIMBURSEMENT REQUEST SUBMITTAL AND BOARD REVIEW

Odb 404.01 Requests for Reimbursement.

- (a) An owner or applicant may submit a request for reimbursement upon completion of corrective action.
- (b) An owner may submit a request for reimbursement for third-party damage costs upon receiving notice of a final court order or court approved settlement for bodily injury costs or property damage costs as defined in this chapter.
- (c) An owner may submit a request for reimbursement for third-party damage costs if notification was provided pursuant to Odb 408.01.
- (d) An owner or applicant may submit a request for reimbursement after the limits of coverage under other valid and collectible policies of insurance held by the owner, if any, are reached.

Source. #8491, eff 11-22-05

Odb 404.02 Reimbursement Submittal Requirements.

- (a) Requests for reimbursement shall include the following:
 - (1) For an initial corrective action or third-party damages request, a completed reimbursement authorization form which includes the information required under Odb 403.02;
 - (2) A list, or brief description of the information included in the reimbursement request submittal, in the form of a cover or transmittal letter;
 - (3) A summary of invoiced expenses or service cost summary;
 - (4) A copy of the work scope approval notice under Odb 407.01(d), if applicable;
 - (5) Copies of all contractor and subcontractor invoices and receipts for expenses for time and materials work, or tabulation of bid item quantities, bid item price, bid item total cost, and total job cost for bid-based work, or service cost summary;
 - (6) A copy of the contract under Odb 406.03 if applicable;
 - (7) Employee payroll records, cost of employee benefits and equipment operating cost data when corrective action is performed by the owner;
 - (8) Other insurance information required under Odb 405.03 if applicable;
 - (9) A copy of the agreement stating a facility owner has a legal obligation to continue corrective action after ownership is conveyed, if applicable.
 - (10) A copy of the final court order or court approved settlement for third-party damages; and

- (11) A written request that reimbursement be co-payable to the owner and service provider, if applicable.
- (b) A re-submittal of information related to a request when the approved amount was less than the requested amount shall be re-submitted within 180 days of the action date and shall include an explanation of the basis of the re-submittal and a copy of the reimbursement approval notice issued under Odb 404.03(d) indicating which costs are being re-submitted.
- (c) Service cost summary reimbursement requests shall be submitted concurrently with the corrective action report.

Source. #8491, eff 11-22-05

Odb 404.03 Reimbursement Review Procedures.

- (a) Upon receipt of a request for reimbursement, the board shall, through the department, determine if the request is complete pursuant to Odb 404.01 and Odb 404.02. Incomplete requests shall be returned within 30 days of receipt.
- (b) Upon receipt of a complete reimbursement request, the board shall request that the department report its recommendation for reimbursement within 120 days of the date of receipt.
- (c) The board shall, through the department, determine the amount of reimbursement based on the reimbursable cost criteria of Odb 407 and Odb 408 and shall authorize the state treasurer to disburse said amount from the fund.
- (d) The board shall, through the department, issue a notice of reimbursement to the owner or applicant within 30 days of a reimbursement determination.
- (e) If the reimbursement amount is less than the requested amount, or if no reimbursement is due, the notice of reimbursement shall indicate the reasons for a reduction in payment or non-payment.
- (f) All reimbursements from the fund for corrective action costs incurred by the department shall be paid directly to the department.
- (g) Upon written request, reimbursements from the fund shall be co-payable to the owner and the service provider.

Source. #8491, eff 11-22-05

Odb 404.04 <u>Reimbursement Request Priority</u>. The board shall consider requests for reimbursement from the fund based on project priority or in the chronological order received if the balance in the fund is not sufficient to pay all uncontested reimbursement requests.

Source. #8491, eff 11-22-05

PART Odb 405 FUND AVAILABILITY, OWNERSHIP TRANSFERS AND OTHER INSURANCE

Odb 405.01 Fund Availability.

- (a) The fund shall be available for reimbursement of costs incurred for corrective action, third-party damages, public water supply gasoline ether monitoring under Env-Ws 300, and providing notification under RSA 485:16-a, II.
- (b) The fund shall be available to the owner of a facility for the first discharge if the facility is in compliance.

- (c) The fund shall be available to the owner of a facility for subsequent discharges if the owner maintains compliance after compliance is achieved, as specified in (b) above.
- (d) The fund shall be available to owners of on-premise-use facilities for corrective action cost and third-party damage cost reimbursement if the requirements of RSA 146-E:4, I and II, are met by July 1, 2010.
- (e) The fund shall be available to meet the requirements of RSA 146-E:4, I and II, subject to the following:
 - (1) The on-premise-use facility is located at a property that is the primary residence of the owner including a single-family home, a duplex, a manufactured home, a farm, or a property where the owner also operates a small business;
 - (2) The owner does not hold title to, or have an interest in, any income producing property other than that specified in (1) above, including but not limited to, stocks or real property held either individually, or through a business, trust, or other related entity; and
 - (3) The owner's total household annual income does not exceed 24 CFR5, Title 24, U.S. Department of Housing and Urban Development, low-income criteria that apply to the county or metropolitan statistical area where the property is located.

Source. #8491, eff 11-22-05

Odb 405.02 <u>Transfer of Facility Ownership</u>. If a facility owner initiates corrective action, or otherwise incurs corrective action costs pursuant to an agreement with a purchaser, the fund shall be available to the purchaser for purposes of the ownership transfer provisions at RSA 146-D:6, I and I-a., RSA 146-E:6, VII and RSA 146-F:5, VIII.

Source. #8491, eff 11-22-05

Odb 405.03 Coverage Under Other Insurance.

- (a) The fund shall provide excess insurance to reimburse corrective action costs or third- party damage costs not covered within the limits of other valid and collectible insurance. The fund shall provide coverage only after any primary, excess, and umbrella coverage is exhausted.
- (b) An owner who will seek reimbursement under RSA 146-D, RSA 146-E or RSA 146-F shall first submit claims to other insurance providers for purposes of a coverage determination before submitting any reimbursement requests to the board. The owner shall submit documentation regarding the findings of the coverage determination prior to, or when submitting an initial reimbursement request to the board. If coverage is denied the insurance shall be deemed not collectible by the owner.
- (c) An owner may use other insurance to cover the cost of the fund deductible or for costs that are not eligible under the fund. Reimbursements from the fund shall be adjusted such that the total of payments received from the fund and other insurance does not exceed an owner's total incurred costs.
- (d) The board shall not approve reimbursement to an insurer that submits a claim under a subrogation agreement with the owner or through an owner's attempted assignment of interest.
- (e) The board shall be subrogated to any claims by an owner for coverage, payments, or reimbursements against any person to whom the owner has a claim.
- (f) An owner who received fund reimbursement for a discharge occurrence and subsequently receives payment from an insurer for the same discharge occurrence shall immediately notify the board of such

payment. The board shall determine whether the fund is entitled to full or partial repayment and shall notify the owner of such determination.

Source. #8491, eff 11-22-05

PART Odb 406 OWNER AND APPLICANT RESPONSIBILITIES

Odb 406.01 Assignment and Subrogation.

- (a) An owner's assignment of interest in the fund or right of subrogation claims against the fund shall not be assignable or transferable to a third party. Any attempted assignment or transfer shall not be effective against the fund and shall be considered void.
- (b) If an owner's insurance coverage, or the responsibility for corrective action or third-party damages, is in dispute, and in the event of any payment from the fund, the board shall be subrogated to all the owner's rights of recovery therefor against any person or organization including other insurers. The owner shall execute and deliver instruments and do whatever else is necessary for the board to pursue such claims upon request by the board.
- (c) The board shall be subrogated to any claims by an owner against any third parties and the board shall be entitled to recover any payments made by a third party to an owner for expenses previously reimbursed by the fund.

Source. #8491, eff 11-22-05

Odb 406.02 Liability for Deductible.

- (a) The deductible amount described in RSA 146-D:6, II shall be withheld from reimbursement to an owner, but not withheld from an applicant.
- (b) If a deductible is not withheld, the board shall bill the owner for the deductible amount through the department and the owner shall pay the amount within 30 days of the billing date.
- (c) If the owner is financially unable to pay the entire deductible amount within 30 days of the billing date, the owner shall submit a financial statement and proposed periodic payment amount and payment schedule that is commensurate with the owner's ability to pay.
- (d) The board shall approve a request for periodic payments upon determining that it is supported by the owner's financial statement, and shall issue a written notice of its decision.
- (e) The deductible amount described in RSA 146-E:6, I shall be withheld from reimbursement to an owner or applicant.
- (f) The deductible assessed for each facility discharge shall be based on the total number of facilities owned pursuant to RSA 146-D:6, II, or pursuant to RSA 146-E:6, I, as applicable. Any permanently closed facility at which no contamination is present, no corrective action is required, or no access to the fund will be sought, shall not be included in the total ownership count for purposes of determining the deductible.
 - (g) A separate deductible shall be applied for each discharge.

Source. #8491, eff 11-22-05

Odb 406.03 Contracts.

(a) An owner may enter into a contract that includes provisions for direct reimbursement to an applicant.

- (b) Contracts shall not provide for separate reimbursement to individual subcontractors.
- (c) The applicant shall agree to waive all claims against the owner for payment of services performed within the limits of a corrective action contract.
- (d) For implementation of a remedial action plan, an owner may enter into separate applicant contracts with the person who manages and oversees plan implementation and the person who performs construction or cleanup operation services.

Source. #8491, eff 11-22-05

Odb 406.04 <u>Right to Enter</u>. An owner shall allow the board or its designee to enter, during reasonable hours, any facility or site location and associated structures, including offices, to inspect any activity and records related to a reimbursement request.

Source. #8491, eff 11-22-05

Odb 406.05 Audits and Qualifications.

- (a) An owner or applicant shall allow the board or its designee to conduct periodic financial audits of all records related to a reimbursement request
- (b) An owner or applicant submitting a reimbursement request with a service cost summary for electronic filing shall have one year or more continuous satisfactory experience providing services in New Hampshire, and one year or more continuous satisfactory experience preparing and submitting reimbursement requests for non-electronic filing.
- (c) If a periodic financial audit reveals that an owner or applicant received an overpayment for a reimbursement request, or did not submit a request in accordance with this chapter, the owner or applicant shall be liable to the fund for any overpayment amount and shall be disqualified from submitting requests for electronic filing until qualifications are re-established pursuant to (b).
- (d) Nothing contained in this chapter shall relieve an owner or applicant from liability under RSA 146-D:7 or RSA 146-G:3.

Source. #8491, eff 11-22-05

PART Odb 407 REIMBURSEMENT OF CORRECTIVE ACTION COSTS

Odb 407.01 Corrective Action Work Scope Requirements.

- (a) With the exception of emergency response action performed under Env-Wm 1604.02, an owner or applicant seeking reimbursement from the fund shall submit a work scope and budget prior to performing corrective action.
- (b) If applicable, the owner or applicant shall evaluate the cost-effectiveness of leasing versus purchasing capital equipment considering equipment cost, reliability, efficiency and performance over the estimated duration of the project, and shall include the evaluation data with the work scope and budget.
- (c) The board shall, through the department, approve a work scope and budget upon determining the proposed work conforms with the technical criteria of Env-Ws 300, Env-Wm 1403, Env-Wm 1600, We 600, We 700 and We 800, as applicable, and the reimbursable corrective action cost criteria of this part.

(d) The board shall, through the department, issue a work scope approval notice that includes the approved budget and a description of the performance standard for the work pursuant to the technical criteria of Env-Ws 300, Env-Wm 1403, Env-Wm 1600, We 600, We 700 and We 800, as applicable.

Source. #8491, eff 11-22-05

Odb 407.02 <u>Corrective Action Performed by Owner</u>. An owner may perform corrective action with its own employees and equipment subject to other applicable requirements or limitations of this chapter. Reimbursement shall be limited to actual costs based on employee pay rates, cost of benefits and equipment operating costs. Costs associated with direct oversight of employees shall not be reimbursable.

Source. #8491, eff 11-22-05

Odb 407.03 <u>Interim Water Supply</u>. Temporary supplies of potable water provided under authority of RSA 146-G, shall only be available through board contractors.

Source. #8491, eff 11-22-05

Odb 407.04 Connection to Existing Public or Non-Public Water Supply System.

- (a) An owner of a private water supply may request reimbursement under RSA 146-G for permanent connection to a public or non-public water supply system available at or near the owner's property boundary.
- (b) The owner shall provide a letter from the water supply system owner or operator authorizing the connection when submitting a work scope and budget to the board.
- (c) Connections to an existing public or non-public water supply system shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.
- (d) If applicable, the owner shall provide a letter from the water supply system owner or operator stating the work was inspected and meets all connection requirements, when submitting a reimbursement request to the board.
- (e) Reimbursable costs shall include the installation of piping, plumbing connections and appurtenances necessary to provide a permanent connection to a public or non-public water supply system, standard one-time connection fees assessed by the water supply system owner, if any, and the costs required to abandon a contaminated supply well.

Source. #8491, eff 11-22-05

Odb 407.05 Replacement of Private Water Supply.

- (a) An owner of a private water supply may request reimbursement under RSA 146-G for the installation of a new or replacement groundwater supply well and appurtenances.
- (b) A new or replacement private water supply shall be approvable if connection to a public or non-public water supply system is not available, or if the cost of connection would exceed the cost of establishing a viable new or replacement private water supply.
- (c) Installations of private groundwater supply wells shall be approved based on conformance with technical criteria given under Env-Ws 300, We 600, We 700 and We 800, as applicable.
- (d) Reimbursable costs shall include site location and development activities, construction of the supply well and pump installation, treatment systems, piping installations, plumbing connections and other necessary appurtenances, startup costs, and the costs required to abandon a contaminated supply well.

Source. #8491, eff 11-22-05

Odb 407.06 Public and Non-Public Water Supply Systems.

- (a) An owner of a public or non-public water supply system may request reimbursement under RSA 146-G for a feasibility study, the construction of a distribution system extension, construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public or non-public water supply system.
- (b) The owner shall conduct a feasibility study and submit a study report prepared by a New Hampshire licensed professional engineer, describing the proposed project in detail and including the following:
 - (1) A discussion of the overall necessity of the project with respect to the level of contamination requiring remediation and the ability of the project to provide a long term solution to the problem;
 - (2) Data regarding the extent of contamination including the number of properties and residential units or their equivalents affected;
 - (3) Data regarding the number of non-contaminated properties and residential units potentially benefiting by the project compared with the number affected by the contamination;
 - (4) The estimated reimbursable apportioned share of the construction costs based on the criteria given under Odb 407.07 and a statement of commitment that the owner will contribute the non-reimbursable share;
 - (5) A discussion of the alternatives considered, a cost-benefit analysis of the alternatives considered, and the rationale for the selection of the proposed project; and
 - (6) A detailed project cost estimate including the total amount of reimbursement ultimately sought from the fund.
- (c) The board shall approve the construction of a distribution system extension, construction of new treatment processes, water supply wells or distribution systems, replacement of a water supply well, or connection to another public or non-public water supply system upon determining the following:
 - (1) The proposed project conforms to the technical criteria given under Env-Ws 300, as applicable, and the apportioning criteria of Odb 407.07, if applicable;
 - (2) New distribution system storage or pumping capacity is needed for the operation of a distribution system extension;
 - (3) The proposed project costs and hookup fees assessed by another owner are specifically related to removing contamination, in consideration of system capacity and total safe yield of water supply wells lost or gained; and
 - (4) The proposed project is the most favorable alternative among those considered pursuant to (b) (5) above.
- (d) Reimbursable costs shall include feasibility study, feasibility study report preparation, and preliminary design costs, whether or not a project proceeds to construction.
- (e) If a project proceeds to construction, reimbursable costs shall include the costs in (d) above, and design, construction, construction oversight, startup, and hookup fee costs.

Source. #8491, eff 11-22-05

Odb 407.07 Apportioned Share of Construction Costs for Public or Non-Public Water Supply System Extensions. Water supply system extension costs reimbursable under RSA 146-G shall be determined by multiplying the percentage of properties serviced that are contaminated by the total project engineering and construction costs attributable to the installation of the distribution mains and appurtenances, to which shall be added 100% of the connection costs and the costs required to abandon the existing water supply for each contaminated property.

Source. #8491, eff 11-22-05

Odb 407.08 <u>Construction Financing</u>. If the balance in the gasoline remediation and elimination of ethers fund plus projected revenues is not sufficient to pay all current uncontested reimbursement claims, current obligations of the department, and estimated future reimbursement claims for known projects, the board shall require that construction projects approved under Odb 407.06 be financed through notes or bonds. In such cases, the fund shall be available for administration costs and for periodic payments of principle and interest due under the note or bond, subject to the other limitations of this chapter.

Source. #8491, eff 11-22-05

Odb 407.09 Reimbursable Corrective Action Costs.

- (a) Reimbursable corrective action costs shall be the usual and customary market rates or costs for labor, equipment, capital equipment startup, operation, maintenance and relocation pursuant to (d)(3) below, materials and supplies, goods, services or task, administration of subcontracted services, fuel and insurance cost surcharge, inventory holding time, procurement of materials and supplies and markup.
- (b) The costs for the installation or use of capital equipment shall be reimbursable at the lease rate, or if purchased, at the vendor cost as established by the firm invoiced cost to the owner.
- (c) If the capital equipment is purchased, the fund shall retain all rights for any salvage value of the equipment.
- (d) When the project is at or near completion the board, in consultation with the owner regarding its intentions for the disposition of purchased capital equipment, shall:
 - (1) Withhold from reimbursement an amount equal to the actual or calculated salvage value;
 - (2) Require that the actual salvage value be repaid to the fund if the equipment is repossessed or sold; or
 - (3) Permit the use of the equipment for corrective action at another facility.

Source. #8491, eff 11-22-05

Odb 407.10 Reimbursement Limitations for Corrective Action Costs.

- (a) Reimbursement shall not exceed actual invoiced costs paid or incurred less any discounts received.
- (b) The costs for local, state or federal inspection fees, or charges related to obtaining access, shall not be reimbursable.
 - (c) Legal costs shall not be reimbursable.
 - (d) An owner's administrative, fiduciary management or supervisory costs shall not be reimbursable.

- (e) Interest charges on unpaid invoices or other obligations shall not be reimbursable.
- (f) Civil penalties or double cost recovery under RSA 146-A, RSA 146-C, or RSA 146-G shall not be reimbursable.
 - (g) Costs associated with the discovery of a discharge shall not be reimbursable.
 - (h) Costs paid by insurance shall not be reimbursable.
 - (i) Costs in excess of approved budgets shall not be reimbursable.
- (j) For competitively bid services, reimbursable costs shall be limited to bid and change order item total quantities measured in place or otherwise certified by the engineer as being completed work, installed and operational.
- (k) No reimbursement shall be approved for any work that does not the meet the performance standard specified in the work scope approval notice under Odb 407.01 (d).

Source. #8491, eff 11-22-05

PART Odb 408 REIMBURSEMENT OF THIRD-PARTY DAMAGE COSTS

Odb 408.01 Owner's Duties in the Event of Claim or Suit.

- (a) If a demand for payment of third-party damages is made against an owner who will seek reimbursement under RSA 146-D, RSA 146-E or RSA 146-F, the owner shall forward such demand to the board within 30 days of receipt and shall inform the board of any attempts made to settle the matter before the filing of a writ or petition. The owner shall undertake any actions necessary to obtain a reasonable settlement, including initiating demands against other parties who may be liable to the owner for such damages.
- (b) Upon service of a writ or petition filed in a court of law by a third party the owner shall provide written notice to the board within 30 days of the return date.
- (c) The owner shall provide the board with a copy of all documents related to the third-party action, including those filed with the court, and shall provide timely notice of scheduled hearings, settlement conferences and other actions throughout the proceedings.
- (d) The owner shall defend the claim to preserve the right to seek reimbursement for third-party damages. The owner shall cooperate fully with the board in all matters relating to defending the claim.
- (e) The owner shall enforce any right to contribution or indemnity against any person or organization who may be liable to the owner or to the third party claimant and shall seek to join such person or organization in any suit brought by a third party against the owner.
- (f) The owner shall submit all proposed settlements to the board before entering an agreement with the claimant and before seeking approval from the court.

Source. #8491, eff 11-22-05

Odb 408.02 Board Intervention in Third-Party Action.

- (a) The board shall not be responsible for the defense of the owner but shall have the right to intervene in the action as a party in interest, and shall have the right to participate in all settlement discussions related to a threatened or filed third-party action.
 - (b) The owner shall concur in any motions to intervene filed with the reviewing court by the board.

Source. #8491, eff 11-22-05

Odb 408.03 Reimbursement of Third-Party Damages

- (a) The owner shall be eligible for reimbursement of third-party damages that are not payable by other insurance, to the extent that the court-ordered judgment or settlement consists of compensable bodily injury costs or property damage costs suffered by the claimant.
- (b) If the board determines that a proposed settlement is collusive, is not legally or factually supportable or does not fairly reflect compensable third party damages, it shall so notify the owner and shall deny any subsequent request for reimbursement based upon such settlement.
- (c) If an owner proceeds to seek court approval of a settlement to which the board objects under paragraph (b), the board shall notify the court of such objection.
- (d) The board shall deny any request for reimbursement of third-party damages to the extent that the settlement or judgment meets the criteria for objection under paragraph (b).
- (e) An owner's legal fees and costs, including contingent fees, punitive awards, statutory double damages, fines, and costs imposed by the court, shall not be reimbursable.
- (f) All settlements entered into by an owner shall allocate legal fees costs, and double damages fines and costs, if any, separately from amounts payable to the plaintiffs. The owner shall request that the amount awarded for legal fees, costs, double damages, fines and costs, if any, be identified in any jury or court award or verdict.

Source. #8491, eff 11-22-05

Odb 408.04 Reimbursement Limitations for Third-Party Damages

- (a) No reimbursement shall be made from the fund for third-party damage costs until the amount of the owner's obligation to pay is finally determined either by judgment against the owner after trial on the merits or by written agreement between the owner and the claimant and entered as an order by a court of law.
- (b) Reimbursable third-party damages shall be limited to certain monetary damages as a result of a court-ordered judgment or court approved settlement entered as an order of the court. The board shall not be bound by any obligations imposed upon the owner through settlement or court-approved judgment for injunctive relief or defense and indemnity of future actions by third parties against the claimant.
- (c) No reimbursement shall be made from the fund for liability attributable to any party other than the owner. In all multi-party cases, all settlements entered into by the owner shall apportion liability among the pertinent parties. The owner shall request that the court order apportion liability among the pertinent parties in any jury or court award or verdict.
- (d) Where an owner's third-party damages are based on a civil judgment, the costs shall not be reimbursable if resulting from a default judgment, or a proceeding otherwise not on the merits or not litigated by the owner to secure a reasonable settlement.

Source. #8491, eff 11-22-05

PART Odb 409 WAIVER OF RULES

Odb 409.01 Requests for Waivers.

- (a) An owner or applicant may request that the board waive the application of the rules of this chapter pertaining to fund eligibility and reimbursement, unless such request, if granted, would constitute a waiver of statutory requirements.
- (b) Requests for waivers shall be submitted in writing to the board and shall include the following information:
 - (1) A specific reference to the section of the rule for which a waiver is being sought;
 - (2) A full explanation of why a waiver is necessary;
 - (3) A full explanation of the alternatives for which a waiver is being sought, if applicable, with supportive information; and
 - (4) A full explanation of how the granting of a waiver would be consistent with the intent of RSA 146-D, RSA 146-E, RSA 146-F or RSA 146-G and this chapter.
- (c) The board shall approve a request for a waiver upon finding that the alternatives proposed are at least equivalent to the requirements of this chapter, and are adequate to ensure that the provisions of the statutes are met.
 - (d) The board shall provide written notice of its decision.

Source. #8491, eff 11-22-05

CHAPTER Odb 500 - REPEALED

<u>Source.</u> #4918, eff 8-22-90; ss by #5114, eff 4-16-91; ss by #5535, eff 12-21-92; rpld by #6543, eff 7-22-97

CHAPTER Odb 600 RULES FOR REIMBURSEMENT FROM THE GASOLINE REMEDIATION AND ELIMINATION OF ETHERS FUND UNDER RSA 146-G - REPEALED

Source. #7633, eff 1-29-02; rpld by #8491, eff 11-22-05

APPENDIX

RULE	STATUTE			
KULL	SIMICIL			
Odb 101.01 through 105.03	RSA 91-A:4, IV, RSA 91-A:5, IV, RSA 541-A: 16, I(a)			
out forth through forth	NOTE 71-71.7, 1V, NOTE 71-71.5, 1V, NOTE 571-71. 10, 1(a)			
Odb 201.01 – Odb 201.02; Odb 202.01	RSA 146-D:5, I; RSA 146-E:6, I; RSA 146-F:5, I;			
0 00 0000	RSA 146-G:11			
Odb 202.01; Odb 203.01 – 203.26	RSA 541-A:16, I (b); RSA 541-A:30-a., I, VI, & VII; RSA			
,	541-A:31; RSA 541-A:32; RSA 541-A:33; RSA 541-A:34;			
	RSA 541-A:35; RSA 541-A:37			
Odb 202.01; Odb 204.01 –204.6	RSA 541-A:29			
Odb 202.01; Odb 205.01 – 205.05	RSA 541-A:3; RSA 541-A:6; RSA 541-A:11, I-VI			
Odb 202.01; Odb 206.01 – 206.03	RSA 541-A:4, I; RSA 541-A:11, I-V; RSA 541-A:16, I(b)			
Odb 202.01; Odb 207.01	RSA 541-A:11, VII			
Odb 202.01; Odb 208.01 – 208.04	RSA 541-A:16, I (d)			
Odb 202.01; Odb 209.01	RSA 146-D:3, III; RSA 146-D:5, I (f); RSA 146-E:3, II;			
	RSA 146-F:3, II; RSA 541-A:16, I(b); RSA 541-A:38			
Odb 401.01 – 402.01	RSA 146-D:1; RSA 146-D:5, I(a) – (d); RSA 146-D:6, I –			
	VI; RSA 146-D:6, IX; RSA 146-E:1; RSA 146-E:6, I –			
	VIII; RSA 146-F:1; RSA 146-F:5, I – IX; RSA 146-G:1, I			
	and II; RSA 146-G:4, I; RSA 146-G:6, I and II			
Odb 403.01- 403.02	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I –			
	VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-			
	G:4, I; RSA 146-G:6, I and II			
Odb 404.01 – 404.04	RSA 146-D:6, VI; RSA 146-E:6, IV; RSA 146-F:5, IV;			
0.11, 405.01	RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II			
Odb 405.01	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I – VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-			
	G:4, I; RSA 146-G:6, I and II			
Odb 405.02	RSA 146-D:6, I and Ia; RSA 146-E:6, VII; RSA 146-F:5,			
Odb 403.02	VIII			
Odb 405.03- 406.01	RSA 146-D:6, I and Ia; RSA 146-E:6, VII; RSA 146-F:5,			
040 403.03- 400.01	VIII			
Odb 406.02	RSA 146-D:6, III; RSA 146-E:6, III; RSA 146-F:5, III			
Odb 407.03 – 407.08	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I –			
040 107.00	VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-			
	G:4, I; RSA 146-G:6, I and II			
Odb 407.09 – 407.10	RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II			
Odb 408.01 – 408.04	RSA 146-D:6, I – VI; RSA 146-D:6, IX; RSA 146-E:6, I –			
	VIII; RSA 146-F:5, I – IX; RSA 146-G:1, II; RSA 146-			
	G:4, I; RSA 146-G:6, I and II			
Odb 409.01	RSA 146-D:6, III; RSA 146-E:6, II; RSA 146-F:5, II			
	RSA 146-D:6, VI; RSA 146-E:6, IV; RSA 146-F:5, IV;			
	RSA 146-G:1, II; RSA 146-G:4, I; RSA 146-G:6, I and II			

N.H. REIMBURSEMENT FUND PROGRAM STATUTES RSA 146-D

Oil Discharge & Disposal Cleanup Fund

RSA 146-D:1 Purpose. – The general court finds that gasoline and diesel fuel, due to their extreme fluidity and suspected carcinogenic qualities, comprise a sufficiently distinct class of property which represents a potential serious health and safety problem to the citizens of New Hampshire. In particular, gasoline and diesel fuel present a potential threat to the quality of New Hampshire's groundwater and environment because of the speed with which these products are able to flow into, and contaminate, valuable groundwater supplies. The purpose of this chapter is to establish financial responsibility for the cleanup of oil discharge and disposal, and to establish a fund to be used in addressing the costs incurred by the owners of underground storage facilities and bulk storage facilities for the cleanup of oil discharge and disposal, to protect groundwater, and for reimbursement for third party damages. An additional purpose is to provide a funding source for cleanup and reimbursement for discharges of gasoline ethers pursuant to RSA 146-G. The fund established under this chapter shall be in addition to the oil pollution control fund established pursuant to RSA 146-A:11-a, and the gasoline remediation and elimination of ethers fund established under RSA 146-G.

Source. 1988, 271:1. 1993, 40:1, eff. June 7, 1993. 2001, 293:7, eff. July 1, 2001.

146-D:2 Definitions. – In this chapter:

I. "Distributor" means any person, wherever resident or located, who imports or causes to be imported oil, as defined in this section, into the state, except those using oil pipelines, railroads, and highways to transport oil products between states other than New Hampshire, or for the international transport of oil products; provided, however, that bringing motor fuel into the state in the fuel supply tank attached to the engine of a vehicle or aircraft shall not be considered importing. "Distributor" does not mean an oil spill cleanup organization or other person acting to contain, remove, clean up, restore or take other remedial or corrective action or measures with regard to the spillage or discharge of oil, or threatened spillage or discharge of oil.

II. "Underground storage facility" means a location consisting of a system of underground storage tanks, pipes, pumps, vaults, fixed containers and appurtenant structures, singly or in any combination, which are used or designated to be used for the storage, transmission, or dispensing of oil or petroleum liquids, and which are within the size, capacity and other specifications prescribed by rules adopted by the commissioner pursuant to RSA 146-C:9, VI.

III. "Oil" means gasoline and diesel products for purposes of collection of fees under RSA 146-D:3, and shall mean "oil" as defined under RSA 146-C:1, XII, for purposes of reimbursement of costs for cleanup and third party damages resulting from a discharge. For the purposes of collecting fees under RSA 146-D:3, the term "oil" shall not include natural gas, liquefied petroleum gas, or synthetic natural gas, regardless of derivation or source, or any oil or diesel products used for heating, processing, or generating electricity.

IV. [Repealed.]

- V. "Bulk storage facility" means a location not regulated under RSA 146-C, consisting of a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, with a total storage capacity less than or equal to 1,100,000 gallons, which is or has been used for the storage and distribution of gasoline or diesel products.
 - VI. "Commissioner" means the commissioner of the department of environmental services.
 - VII. "Department" means the department of environmental services.
- VIII. "Gasoline" means all products commonly or commercially known or sold as gasoline, including casing head and absorption of natural gasoline, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale, or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of

test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (ASTM Designation D-86) show not less than 10 percent distilled (recovered) below 347 degrees Fahrenheit (175 degrees Centigrade) and not less than 95 percent distilled (recovered) below 464 degrees Fahrenheit (240 degrees Centigrade); provided that the term gasoline shall not include commercial solvents or naphthas which distill by ASTM method D-86 not more than 9 percent at 176 degrees Fahrenheit and which have a distillation range of 150 degrees Fahrenheit or less, or liquefied gases which would not exist as liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

IX. "Diesel fuel" means a liquid hydrocarbon fuel used in internal combustion high speed engines that operate with a diesel thermodynamic cycle.

Source. 1988, 271:1. 1989, 230:9. 1990, 3:99. 1991, 322:1. 1993, 40:2, 3; 294:3, 17, I. 1995, 247:1, eff. July 1, 1995. 1996, 228:29, 110, eff. July 1, 1996. 2001, 293:8, eff. July 1, 2001.

146-D:3 Fund Established; Collection. –

I. There is established an oil discharge and disposal cleanup fund. This fund shall be used, consistent with the provisions of this chapter, to reimburse costs incurred in cleaning up oil discharges and disposals in the groundwaters and surface waters and soils of the state and in paying third party damages, including administrative, technical and legal support required by the oil fund disbursement board in administering the fund. The fund shall be collected as a fee imposed on all oil imported into this state.

II. Any distributor who imports, or who causes oil to be imported into this state shall first be licensed with the department of safety. A fee of \$.015 per gallon of oil shall be assessed at the time of importation into this state. All fees shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. If the fund's balance becomes greater than \$10,000,000, the fund assessment fees provided for in this paragraph shall be discontinued and only reestablished when the fund's balance is less than \$5,000,000. Any distributor who imports or blends home heating oil which is subsequently sold as diesel fuel for the propulsion of motor vehicles shall report the fuel as required in RSA 146-D:3, III. Any person purchasing home heating oil for diesel use and not declaring this intent to the distributor at the time of purchase shall be liable in the same manner as the distributor would be.

III. The fee provided for in this section shall be collected by agents of the department of safety, in the same manner as provided for in RSA 260:38. Such funds shall be deposited in the oil discharge and disposal cleanup fund established under this chapter. Any person who fails to obtain a license, file a report, or pay the fees established in this chapter shall be subject to the penalties and interest described in RSA 146-A:11-b. The board, pursuant to rules adopted under RSA 146-D:5, may waive all or any portion of such penalties, for good cause.

- IV. Moneys collected for the fund shall be deposited with the state treasurer to the credit of said fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.
- V. No distributor licensed under this section shall import oil into this state without paying the fee required by this section. Any distributor licensed under this section may seek and shall receive for valid claims an import credit for oil which a distributor transfers out of state during any reporting period.
- VI. The fee collected on motor fuels shall be deposited in the oil discharge and disposal cleanup fund, except as provided in subparagraph (b), and divided as follows:
 - (a) For each gallon of diesel fuel for which a fee is assessed, \$.014 shall be placed in an account for reimbursement of owners of eligible underground storage facilities and \$.001 shall be placed in an account to be used for reimbursement of owners of eligible bulk storage facilities.
 - (b) For each gallon of gasoline for which a fee is assessed, \$0.0115 shall be placed in the underground storage facilities account, \$0.001 shall be placed in the bulk storage facilities account and \$0.0025 shall be placed in the gasoline remediation and elimination of ethers fund established under RSA 146-G.

(c) For all fees assessed on gasoline during the period from January 1, 2001 to July 1, 2001 and deposited in the account for reimbursement of owners of eligible underground storage facilities, 18 percent of those fees shall be transferred to gasoline remediation and elimination of ethers fund established under RSA 146-G.

VII. All moneys in the oil discharge and disposal cleanup fund prior to the effective date of this paragraph shall be available only for reimbursement of owners of underground storage facilities, except that, within 30 days after the effective date of this paragraph, the oil fund disbursement board shall make \$580,000 of such moneys available for reimbursement of owners of bulk storage facilities. This shall be a one-time only transfer of funds between accounts for the start-up of the bulk storage reimbursement program. One-half of the \$.001 per gallon collected for bulk storage facilities shall be deposited in the account for reimbursement of owners of underground storage facilities until the \$580,000 has been returned in full.

Source. 1988, 271:1. 1989, 230:10. 1990, 3:100, 101; 252:20. 1991, 322:2. 1993, 40:4, 5; 294:4-6. 1995, 247:2, 3, eff. July 1, 1995. 2001, 293:9, eff. July 1, 2001.

146-D:4 Oil Fund Disbursement Board Established; Membership.

- I. There is established the oil fund disbursement board, to be composed of the following members:
- (a) The commissioner of environmental services, or his designee.
- (b) The commissioner of safety, or designee.
- (c) Three members representing petroleum dealers, distributors, and refiners, appointed by the governor with the consent of the council.
- (d) Two public members, appointed by the governor with the consent of the council.
- (e) Two members of the senate, appointed by the president of the senate.
- (f) Two members of the house of representatives, appointed by the speaker of the house.
- (g) One member, who shall be a fuel oil dealer, appointed by the governor.
- II. The board shall select a chairman from among its members at its organizational meeting.
- III. The board members shall serve without compensation, except that all non-legislative members shall be reimbursed for mileage incurred on board business at the state employee mileage rate. The legislative members shall be reimbursed for mileage at the legislative rate. Such reimbursements shall be a charge against the oil discharge and disposal cleanup fund established under RSA 146-D:3, I.
- IV. Any member of the board having an individual interest, or an interest in another business, which may conflict with an issue under consideration by the board, shall not participate in any deliberations or vote of the board on the issue before the board.
- V. The terms of the board members shall expire on January 1, 1994. Subsequent terms for state agency and legislative members shall be the same as their terms in office. New board members appointed under subparagraphs I(c) and I(d) shall have 3-year terms, except that the initial term for the member representing the petroleum dealers shall be one year, and the initial terms for the member representing the petroleum distributors and for one of the public members shall be 2 years. Upon term expiration, each appointed member shall hold office until a successor shall be appointed and qualified. Board members may be reappointed to subsequent terms, including those members whose terms expire as of January 1, 1994.

Source. 1988, 271:1. 1993, 294:7, 8, eff. July 1, 1993; 337:3, eff. Aug. 28, 1993.

146-D:5 Board Powers and Duties.

- I. The board shall adopt rules, pursuant to RSA 541-A, relative to:
- (a) Processing applications for compensation from the oil discharge and disposal cleanup fund.
- (b) Procedures for verifying claims presented under this chapter.
- (c) Specifying costs in relation to reimbursements claimed.
- (d) Developing eligibility criteria in addition to the requirements of RSA 146-D:6, I and I-a.

- (e) [Repealed.]
- (f) Waiver of penalties due or past due under RSA 146-D:3, III.
- II. The board shall submit an annual report of the status of the oil discharge and disposal cleanup fund no later than October 1, to the speaker of the house and the president of the senate. The first such report shall be submitted no later than October 1, 1993.
- III. The board, with approval of the governor and council, may employ legal counsel as necessary to perform its duties in administering the oil discharge and disposal cleanup fund.
- IV. The board may request that the attorney general issue subpoenas, examine witnesses, or request any other information on behalf of the board for the purposes of determining eligibility for reimbursement under this chapter, or under RSA 146-E and 146-F.

Source. 1988, 271:1. 1990, 141:1, 3, I; 252:21. 1991, 322:3. 1993, 40:6, eff. June 7, 1993; 294:9, eff. July 1, 1993. 1997, 39:1, eff. Jan. 1, 1998.

146-D:5-a Competitive Bidding Required; Rulemaking.

- I. The commissioner of environmental services shall enter into the competitive bidding process for any project undertaken by the department of environmental services under the authority of this chapter with an estimated cost of \$10,000 or more. The commissioner may enter the competitive bidding process for any such project with an estimated cost of less than \$10,000.
- II. The commissioner of environmental services shall adopt rules, pursuant to RSA 541-A, relative to the competitive bidding process to be used under this section.

Source. 1991, 322:7, eff. Aug. 27, 1991.

146-D:6 Eligible Expenses.

- I. The portion of the fund for reimbursement of owners of underground storage facilities shall be available to owners of underground storage facilities which are subject to the provisions of RSA 146-C and which are in compliance with New Hampshire Code of Administrative Rules Env-Ws 411. Owners of regulated underground storage facilities with current permits and current records shall be eligible to apply to the fund. Ownership of facilities which have been physically removed or closed in place on or after July 1, 1988 in accordance with the requirements of Env-Ws 411 where cleanup of oil has not yet been completed may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund.
- I-a. The portion of the fund for reimbursement of owners of bulk storage facilities shall be available to owners of bulk storage facilities that are in compliance with all applicable federal and state requirements for such facilities. Ownership of facilities which have been physically removed or closed in place on or after July 1, 1993, in accordance with the requirements of the department where cleanup of oil has not yet been completed, may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund. Reimbursements shall only be made for costs of cleanup and third party damages associated with gasoline and diesel product spillage. To be eligible for reimbursement, the following registration requirements shall be met:
- (a) The owner shall have registered the facility with the department on forms provided by the department which shall include but not be limited to the following information:
 - (1) Facility name, location, and address.
 - (2) Owner's name, mailing address and telephone number.
 - (3) Contact person for the facility.
- (4) The storage capacity, product stored, material of construction, and age of the storage tanks and appurtenances.

- (b) Bulk storage facilities existing on or before July 1, 1993, shall be registered no later than July 1, 1996. Bulk storage facilities constructed after July 1, 1993, shall be registered no later than 60 days after the completion of construction. The board may waive the registration deadlines established by this subparagraph, on a case by case basis, for good cause.
- II. (a) To the extent such amount is expended from the fund, or for such lesser amount as is expended, owners shall be liable to the fund for the following:
- (1) The owner of from one to 3 facilities shall be responsible for the initial \$5,000 of cleanup costs at each facility owned.
- (2) The owner of from 4 to 9 facilities shall be responsible for the initial \$10,000 of cleanup costs at each facility owned.
- (3) The owner of from 10 to 19 facilities shall be responsible for the initial \$20,000 of cleanup costs at each facility owned.
- (4) The owner of 20 or more facilities shall be responsible for the initial \$30,000 of cleanup costs at each facility owned.
- (b) This amount shall not be withheld from reimbursement when the reimbursement is disbursed from the fund over to a party other than an owner liable under this paragraph, but the owner shall be liable to the fund for the amounts set forth in subparagraph II(a). The board may pursue the owner in an independent legal action, and the owner shall be liable for interest from the date that the disbursement is made and for legal fees and costs incurred by the fund in obtaining and enforcing judgment under this paragraph. All amounts recovered shall be paid into the fund.
- III. Owners of facilities eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of onsite and off-site cleanup of oil discharges in amounts not to exceed a total of \$1,500,000. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.
- IV. Owners of facilities eligible under this chapter may apply for reimbursement for costs of cleanup and third party damages incurred on or after July 1, 1988.
- V. Costs of new tanks and associated piping, or repairs to existing tanks and associated piping, shall not be considered eligible costs under this chapter.
- VI. Notwithstanding any provision of this chapter, the department shall not be liable to any eligible party if sufficient funds are not available in the fund to meet the limits established in this chapter. Applications received by the department for which sufficient funds are not available at the time of application shall be held by the department pending availability of funds and shall be reviewed in the order in which they were received.
- VII. The board shall pay all eligible costs approved by the board within 30 days of such approval. If any eligible costs are not paid within 30 days, interest on any unpaid amount shall incur to the designated recipient at the rate of 1- 1/2 percent per month. Any interest payments shall be a charge against the fund. Any application for compensation which is deemed to be incomplete by the board or the department of environmental services shall be returned to the applicant forthwith with a written explanation as to what additional information is necessary in order to process the application.
- VIII. For underground storage facilities which contain fuel oil as defined in RSA 146-E:2, II or motor oil, or used motor oil, only those facilities at which a release was discovered prior to January 1, 1995, are eligible for reimbursement from the oil discharge and disposal cleanup fund.
- IX. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1988, 271:1. 1990, 208:11, 13. 1991, 322:4. 1993, 40:7-9; 294:10-13; 337:6. 1995, 247:4-6, eff. July 1, 1995; 282:2, eff. July 1, 1995; 282:9, eff. Jan. 1, 2003. 1996, 228:106, 108, 109, eff. July 1, 1996. 1997, 39:2, 3, eff. Jan. 1, 1998. 2001, 33:1, eff. Aug. 7, 2001.

146-D:7 Penalties.

- I. Any person who violates the provisions of this chapter shall be subject to the lien provisions provided in RSA 260:63 through RSA 260:65-a.
- I-a. Where any liability to a fund under RSA 146-D:6, RSA 146-E:6, or RSA 146-F:5 is not paid as prescribed by the oil fund disbursement board, the amount, including interest together with the costs that may accrue in addition thereto, shall become a lien in favor of the board upon all property and rights to property, whether real or personal, in the same manner as that prescribed in RSA 260:63 through RSA 260:65-a, which provisions shall govern the board"s imposition and enforcement of the lien created by this section.
- II. Any person who misrepresents any material fact or submits any false material statement, information, or certification to the board shall forfeit any right to reimbursement under this chapter.
- III. Any person who recklessly or knowingly misrepresents any material fact or who recklessly or knowingly submits any false material statement, information, or certification to the board shall be guilty of a class B felony if a natural person and guilty of a felony if any other person. Notwithstanding RSA 651:2, a person may, in addition to any sentence of imprisonment, probation, or conditional discharge, be fined not more than \$25,000 if found guilty of any violation under this paragraph.

Source. 1988, 271:1, eff. July 1, 1988. 1997, 39:4, eff. Jan. 1, 1998. 1998, 357:3, eff. July 1, 1998.

146-D:8 Administrative Costs.

I. Notwithstanding any provision of law, if the expenditure of additional funds is necessary for the costs of administration of the collection process established in RSA 146-A:11-b, II and III, upon request of the commissioner of safety, the governor and council, upon recommendation of the oil fund disbursement board and with the prior approval of the fiscal committee of the general court, may authorize the transfer of funds from the oil discharge and disposal fund established under RSA 146-D:3, I to the department of safety for such purposes.

II. [Repealed.]

III. The commissioner of safety shall file reports with the oil fund disbursement board on a quarterly basis, relative to the administrative costs of the department's collection activities under RSA 146-D:3, III. Such report shall include detailed accounting of such costs, including procedures taken to separate such costs from any other administrative costs incurred by the department relative to any other statutory responsibilities of the department.

Source. 1988, 271:1. 1990, 141:2, eff. June 18, 1990; 141:3, II, eff. June 30, 1992

<u>146-D:9 Board Administratively Attached.</u> – The oil fund disbursement board shall be administratively attached to the department of environmental services pursuant to RSA 21-G:10.

Source. 1988, 271:1, eff. July 1, 1988

RSA 146-E - Fuel Oil Discharge Cleanup Fund

<u>146-E:1 Purpose</u>. – The general court finds that discharges of fuel oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of fuel oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the prevention and cleanup of fuel oil discharges.

Source. 1993, 337:1, eff. Aug. 28, 1993. 1999, 164:5, eff. July 1, 1999.

<u>146-E:2 Definitions. – In this chapter:</u>

- I. "Bulk storage facility" means a location not regulated under RSA 146-C, consisting of a system of storage tanks, pipes, pumps and appurtenant structures, singly or in any combination, with a total storage capacity less than or equal to 1,100,000 gallons, which is or has been used for the storage and distribution of fuel oil.
 - I-a. "Department" means the department of environmental services.
- II. "Fuel oil" means fuel oil products stored for on-premise heating purposes, and not for purposes of propulsion of motor vehicles, operation of machinery, or primarily used for the generation of electric power.
- III. "On-premise-use facility" means a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, which is or has been used for the storage of fuel oil for on-premise-use.

Source. 1993, 337:1. 1995, 282:3, eff. July 1, 1995. 1996, 228:30, eff. July 1, 1996.

146-E:3 Fund Established; Collection.

- I. There is established a fuel oil discharge cleanup fund, which shall be administered by the oil fund disbursement board established under RSA 146-D:4. This fund shall be used to reimburse costs incurred in the prevention and cleanup of fuel oil discharges in the waters and soils of the state, including administrative, technical and legal support required by the oil fund disbursement board in administrating the fund, and in paying third party damages.
- II. A fee of \$.01 per gallon of fuel oil shall be assessed at the time of importation into this state. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which shall be collected and enforced in the manner described in RSA 146-D:3, III and V. All fee revenues shall be deposited in the fuel oil discharge cleanup fund. If the fund's balance becomes greater than \$2,500,000, the assessment of fees shall be discontinued and only reestablished when the fund's balance is less than \$1,500,000. Until the fund balance reaches \$2,000,000, at least 50 percent of the fees collected shall be allocated for reimbursements to on-premise-use facilities are located and for the administrative, technical and legal support associated with such reimbursements.
- III. Moneys collected for the fund shall be deposited with the state treasurer to the credit of said fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.

Source. 1993, 337:1, eff. Aug. 28, 1993. 1997, 58:1, eff. July 1, 1997 at 12:01 a.m. 1999, 164:3, 6, eff. July 1, 1999.

146-E:4 Requirements for On-Premise-Use Facilities.

- I. On-premise-use facilities installed on or after the effective date of this act shall comply with the provisions of the National Fire Protection Association standard NFPA 31, and all applicable local codes or ordinances.
 - II. All on-premise-use facilities shall be equipped with a vent alarm system on or before July 1, 1995.
- III. On-premise-use facilities subject to the provisions of RSA 146-C shall comply with the provisions of New Hampshire code of administrative rules Env-Ws 411.

Source. 1993, 337:1. 1995, 282:4, eff. July 1, 1995.

- <u>146-E:5 Requirements for Bulk Storage Facilities.</u> The fund shall be available to owners of bulk storage facilities which are in compliance with all applicable federal and state requirements for such facilities. To be eligible for reimbursement, the following registration requirements shall be met:
- I. The owner shall have registered the facility with the department on forms provided by the department. Information on the form shall include, but not be limited to, the following:
 - (a) Facility name, location and address.
 - (b) Owner's name, mailing address and telephone number.
 - (c) Contact person for the facility.
- (d) The storage capacity, product stored, material of construction and age of the storage tanks and appurtenances.
- II. Bulk storage facilities existing on or before July 1, 1993, shall be registered no later than July 1, 1996. Bulk storage facilities constructed after July 1, 1993, shall be registered no later than 60 days after the completion of construction.

Source. 1993, 337:1. 1995, 247:7, eff. July 1, 1995. 1996, 228:109, eff. July 1, 1996.

146-E:6 Eligible Expenses.

- I. The fund shall be available to owners of on-premise-use facilities, owners of land upon which on-premise-use facilities are located, and bulk storage facilities as defined in this chapter. The oil fund disbursement board may adopt rules for administering disbursements from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of bulk storage facilities shall be liable to the fund for initial cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-use facilities shall be liable to the fund for the initial \$100 of cleanup costs at each facility owned, to the extent such amount is expended from the fund, or for such lesser amount as is expended.
- II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of fuel oil discharges in amounts not to exceed a total of \$500,000, incurred on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter who have demonstrated financial need, may apply for reimbursement of costs to meet the requirements of RSA 146-E:4, I and II in amounts not to exceed a total of \$1,000, incurred on or after July 1, 1999.
- III. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.
- IV. Requests for reimbursement received by the oil fund disbursement board for which sufficient funds are not available shall be held by the board pending availability of funds and shall be reviewed in the order in which they were received.
- V. Facilities which have not met the requirements of RSA 146-E:4 and RSA 146-E:5 shall not be eligible for reimbursement until compliance with such sections has been achieved. The board may waive the registration deadlines established by RSA 146-E:5, II on a case by case basis, for good cause.

- VI. Costs of new bulk storage facilities or new on-premise-use facilities subject to regulation under RSA 146-C, or repairs to such existing facilities, shall not be considered eligible costs under this chapter.
- VII. Ownership of facilities or land on which on-premises-use facilities are located, eligible under this chapter, where the facilities have been physically removed or closed in place on or after October 1, 1992 in accordance with the requirements of the department and where cleanup of oil has not yet been completed, may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund.

VIII. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1993, 337:1. 1995, 247:8, eff. July 1, 1995. 1997, 39:5, eff. Jan. 1, 1998; 58:3, eff. at 12:01 a.m., July 1, 1997. 1999, 164:7, 8, eff. July 1, 1999.

<u>146-E:6-a Penalties.</u> – Any person who violates any provision of this chapter shall be subject to the penalties provided in RSA 146-D:7.

Source. 1997, 39:6, eff. Jan. 1, 1998.

<u>146-E:7</u> Annual Report. – The oil fund disbursement board shall submit by October 1 of each year an annual report on the status of the fuel oil discharge cleanup fund to the governor, the speaker of the house and the senate president. The first report shall be submitted no later than October 1, 1994.

Source. 1993, 337:1, eff. Aug. 28, 1993.

RSA 146-F - Motor Oil Discharge Cleanup Fund

<u>146-F:1 Purpose</u>. – The general court finds that discharges of motor oil and used motor oil represent a potential serious health and safety problem to the citizens of New Hampshire and a threat to the quality of the groundwaters and surface waters of the state. In addition, the cost of cleanup of motor oil and used motor oil discharges is a significant economic burden for which economic assistance is otherwise not available. The purpose of this chapter is to establish a fund to be used in addressing the costs incurred in the cleanup of motor oil and used motor oil discharges.

Source. 1995, 282:1, eff. July 1, 1995.

<u>146-F:2 Definitions. – In this chapter:</u>

- I. "Motor oil' means any lubricating oil, which is reclaimable, classified for use in an internal combustion engine, transmission, gear box, or differential for a motor vehicle, boat, or off-highway recreational vehicle, or commercial or household power equipment.
- II. "Motor oil storage facility' means a location consisting of a system of storage tanks, pipes, pumps, and appurtenant structures which is, or has been, used for the storage of motor oil or used motor oil.

Source. 1995, 282:1, eff. July 1, 1995.

146-F:3 Fund Established; Collection.

- I. There is established a motor oil discharge cleanup fund, which shall be administered by the oil fund disbursement board established under RSA 146-D:4. This fund shall be used to reimburse costs incurred in the cleanup of motor oil and used motor oil discharges in the waters and soils of the state, including administrative, technical, and legal support required by the oil fund disbursement board in administering the fund, and in paying third party damages.
- II. A fee of \$.04 per gallon of motor oil shall be assessed at the time of importation into this state. Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which shall be collected and enforced by the department of safety in the manner described in RSA 146-A:11-b. The oil fund disbursement board may waive all or any portion of penalties or interest for good cause. All fee revenues shall be deposited in the motor oil discharge cleanup fund. If the fund's balance becomes greater than \$1,000,000, the assessment of fees shall be discontinued and only reestablished when the fund's balance is less than \$600,000.
- III. Moneys collected for the fund shall be deposited with the state treasurer to the credit of the fund and may be invested as provided by law. Interest received on such investment shall also be credited to the fund.
- IV. Within 30 days after the effective date of this paragraph, the department of environmental services shall transfer \$400,000 from the oil pollution control fund to the motor oil discharge cleanup fund. This shall be a one-time only transfer of funds for the start-up of the motor oil discharge cleanup fund. Half of the \$.04 per gallon collected for motor oil storage facilities shall be deposited in the oil pollution control fund until the \$400,000 has been returned in full.

Source. 1995, 282:1, eff. July 1, 1995.

<u>146-F:4 Requirements for Motor Oil Storage Facilities.</u> – The fund shall be available to owners of motor oil storage facilities, which are in compliance with all applicable federal and state requirements and local codes and ordinances for such facilities.

Source. 1995, 282:1, eff. July 1, 1995.

146-F:5 Eligible Expenses.

- I. The fund shall be available to owners of motor oil storage facilities, and owners of land upon which motor oil storage facilities are located. The oil fund disbursement board may adopt rules for administering disbursements from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of motor oil storage facilities shall be liable to the fund for initial cleanup costs in the manner described in RSA 146-D:6, II.
- II. Owners of facilities or land eligible under this chapter may apply for reimbursement of court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-site and off-site cleanup of motor oil and used motor oil discharges in amounts not to exceed \$500,000, incurred on or after the effective date of this chapter.
- III. The fund shall be deemed excess insurance over any other valid and collectible insurance for the costs of cleanup and damages to third parties. There shall be no right of recovery against the fund for payments made under other insurance.
- IV. Requests for reimbursement received by the oil fund disbursement board shall be reviewed in the order in which they are received. If sufficient funds are not available the request shall be held by the board pending availability of funds.
- V. Facilities which have not met the requirements of RSA 146-F:4 shall not be eligible for reimbursement until compliance with such section has been achieved.
- VI. Costs of new tanks and associated piping, or repairs to existing tanks and associated piping, shall not be considered eligible costs under this chapter.

VII. The fund shall only be available for reimbursement of costs incurred for releases of motor oil or used motor oil discovered after January 1, 1995.

VIII. Ownership of facilities or land eligible under this chapter where the facilities have been physically removed or closed in place on or after October 1, 1995 in accordance with the requirements of the department and where cleanup of oil has not yet been completed, may be transferred to a new owner, and the new owner shall be eligible to apply to the fund subject to the same compliance requirements as the original owner. After ownership is transferred, only the new owner shall be eligible for reimbursement from the fund.

IX. Upon payment from the fund for cleanup and corrective action costs or for third party liability costs pursuant to this chapter, the right of an owner to recover any payment from any third party potentially responsible for such costs shall be assumed by the board to the extent of payment made from the fund. An owner shall not receive multiple compensation for the same injury and any such compensation shall be repaid to the fund.

Source. 1995, 282:1, eff. July 1, 1995. 1997, 39:7, eff. Jan. 1, 1998.

<u>146-F:5-a Penalties</u>. – Any person who violates any provision of this chapter shall be subject to the penalties provided in RSA 146-D:7.

Source. 1997, 39:8, eff. Jan. 1, 1998.

<u>146-F:6 Annual Report.</u> – The oil fund disbursement board shall submit by October 1 of each year an annual report on the status of the motor oil discharge cleanup fund to the governor, the speaker of the house and the senate president. The first report shall be submitted no later than October 1, 1996.

Source. 1995, 282:1, eff. July 1, 1995.

RSA 146-G - Gasoline Remediation & Elim. Ethers Fund

146-G:1 Purpose.

I. The general court finds that ethers contained in gasoline, due to their extreme fluidity, recalcitrance to natural degradation, low taste and odor thresholds, and probable carcinogenic qualities, comprise a sufficiently distinct class of property which represent a particular, present, and rapidly escalating threat to the quality of all the water of the state and, thereby, to our citizens. The general court also finds that potentially serious health, safety, and environmental problems are evidenced due to the speed with which ethers are able to flow into, contaminate, and accumulate in invaluable groundwater supplies. In addition, the cost of cleanup of gasoline ethers in groundwater and surface water is a significant economic burden for which economic assistance may otherwise not be available.

II. The purpose of this chapter is to provide procedures that will expedite the cleanup of gasoline ether spillage, mitigate the adverse affects of gasoline ether discharges, encourage preventive measures, impose a fee upon importers of neat gasoline ethers into the state and establish a fund for the remediation of groundwater and surface water contaminated by gasoline ethers. The fund may also be used to provide financial reimbursement to owners of public and private water supplies for the treatment and removal of gasoline ethers and associated contaminants when present with those ethers from those supplies. The fund established under this chapter shall be in addition to the oil pollution control fund established pursuant to RSA 146-A:11-a and is separate from the oil discharge and disposal cleanup fund established pursuant to RSA 146-D:3.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:2 Definitions. In this chapter:

- I. "Board" means the oil fund disbursement board established under RSA 146-D:4.
- II. "Discharge" or "spillage" means the release or addition of any gasoline containing ethers to land, groundwater, or surface water.
- III. "Distributor" means any person, wherever resident or located, who imports or causes to be imported neat gasoline ethers, as defined in this section, into the state; provided, however, that bringing gasoline into the state in the fuel supply tank attached to the engine of a vehicle or aircraft shall not be considered importing. "Distributor" does not mean a spill cleanup organization or other person acting to contain, remove, clean up, restore, or take other remedial or corrective action or measures with regard to the spillage or discharge of gasoline or neat gasoline ethers, or threatened spillage or discharge of gasoline or neat gasoline ethers.
- IV. "Ethers" means organic compounds formed by the treatment of an alcohol with a dehydrating agent resulting in 2 organic radicals joined by an oxygen atom.
- V. "Facility" means a location, including structures or land, at which gasoline is subjected to treatment, storage, processing, refining, pumping, transfer, or collection.
- VI. "Gasoline" means all products commonly or commercially known or sold as gasoline, including casing head and absorption of natural gasoline, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale, or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (ASTM Designation D-86) show not less than 10 percent distilled (recovered) below 347 degrees Fahrenheit (175 degrees Centigrade) and not less than 95 percent distilled (recovered) below 464 degrees Fahrenheit (240 degrees Centigrade); provided that the term gasoline shall not include commercial solvents or naphthas which distill by ASTM method D-86 not more than 9 percent at 176 degrees Fahrenheit and which have a distillation range of 150 degrees Fahrenheit or less, or liquefied gases which would not exist as liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.
- VII. "Gasoline ethers" means any ether added to gasoline and its by-products, including, but not limited to, methyl tertiary butyl ether (MtBE), tertiary amyl methyl ether (TAME), di-isopropyl ether (DIPE), and ethyl tertiary butyl ether (EtBE). "Gasoline ethers" shall not include prepackaged goods intended for retail consumer use including, but not limited to, starting fluid and octane booster.
- VIII. "Gasoline remediation and elimination of ethers fund" means the fund established pursuant to RSA 146-G:4.
- IX. "Gasoline terminal facility" means any facility of any kind and its related appurtenances located within the boundaries of this state that is used or capable of being used for pumping, handling, transferring, processing, refining, or storing gasoline.
- X. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations.
- XI. "Neat gasoline ethers" mean ethers intended for blending with gasoline prior to sale to the public which are imported into the state with little or no admixtures or dilution. Neat gasoline ethers shall contain a minimum of 92.1 percent by volume ether, including its impurities.
- XII. "Removal costs" means the costs of containment, removal, cleanup, restoration, and remedial or corrective action or measures that are incurred after a spillage or discharge of gasoline has occurred or, in any case in which there is a threat of a spillage or discharge of gasoline, the cost to prevent, minimize, or mitigate gasoline pollution from such an incident.
- XIII. "Surface water" means streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, watercourses, and other bodies of water, natural or artificial.

Source. 2001, 293:10, eff. July 1, 2001.

<u>146-G:3 Recovery by State.</u> Recovery of costs of containment cleanup, removal, or corrective measures expended under this chapter shall be in accordance with RSA 146-A:9.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:4 Fund Established.

- I. There is hereby established the gasoline remediation and elimination of ethers fund which shall be administered by the board. This nonlapsing, revolving fund shall be used to pay the costs to implement the provisions of this chapter which include, but are not limited to, the salaries and expenses of personnel, as approved by the fiscal committee, to the extent that such salaries and expenses are incurred in implementing the provisions of this chapter, testing and monitoring activities, and other costs of treatment or removal or corrective measures deemed necessary by the board as a result of an actual or potential discharge of gasoline ethers into or onto the surface water or groundwater of the state. Moneys from the fund shall be used to mitigate the adverse affects of gasoline ether discharges including, but not limited to, provision of emergency water supplies to persons affected by such pollution, and, where necessary as determined by the board, the establishment of an acceptable source of potable water to injured parties. Not more than \$150,000 shall be allocated annually for research programs dedicated to the development and improvement of preventive and cleanup measures concerning such gasoline ether discharges. Income derived from the fund shall only be used for those administrative costs needed to implement this chapter.
- II. Moneys in the fund not currently needed to meet the obligations of the board under this chapter shall be deposited with the state treasurer to the credit of the fund and shall be invested as provided by law. Interest received on such investment shall also be credited to the fund. If the fund's balance becomes greater than \$2,500,000, the transfer of moneys into the fund as established in RSA 146-D:3 shall be discontinued and only re-established when the fund's balance is below \$1,000,000. Those fees normally transferred to the gasoline remediation and elimination of ethers fund shall accumulate instead in the account for reimbursement of owners of eligible underground storage facilities under RSA 146-D:3,VI.
- III. All moneys paid to the state to reimburse costs paid out of the gasoline remediation and elimination of ethers fund by any person strictly liable to the state under RSA 146-A:3-a shall be placed in the gasoline remediation and elimination of ethers fund. Source. 2001, 293:10, eff. July 1, 2001.

146-G:5 Competitive Bidding Required.

- I. Except as provided in paragraph II, the commissioner of environmental services shall enter into the competitive bidding process for any project undertaken by the department of environmental services under the authority of this chapter with an estimated cost of \$10,000 or more. The commissioner may enter the competitive bidding process for any such project with an estimated cost of less than \$10,000.
- II. When procuring professional services from engineers, architects, and surveyors associated with the investigation or cleanup of contamination from gasoline ethers, the commissioner of environmental services shall procure those services in accordance with the procedures contained in RSA 21-I:22.

Source. 2001, 293:10, eff. July 1, 2001.

<u>146-G:6 Corrective Measures Authorized.</u> Corrective measures authorized by this chapter shall include but not be limited to:

I. Provision of interim water supplies to residents whose water supplies have been contaminated due to the presence of gasoline ethers above standards set by the board or a condition related to gasoline ethers determined to be hazardous by the office of community and public health and the state forensic toxicologist. This may include the supply of bottled water and the installation and operation of water supply treatment systems, approved or provided by the board.

II. The establishment of an acceptable source of potable water to injured parties, where necessary, as determined by the board. This may include but not be limited to a proportioned share of the costs of construction of the extension of public water mains and appurtenances, the installation of replacement water supply wells and appurtenances, or the installation of water treatment processes for new or existing water supplies. The extent of reimbursement shall be determined based upon criteria established by rules adopted by the board. Such rules shall consider the overall need for the capital investment to address contamination or threatened contamination of water supplies by gasoline ethers. Operation and maintenance costs or annual user fees for new or upgraded public water supply main extensions or treatment processes shall not be eligible expenses under this paragraph.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:7 License Required; Fee.

I. Any distributor who imports or causes to be imported neat gasoline ethers into the state shall be licensed by the department of safety under this chapter. The annual fee for the license shall be \$0.10 per gallon of neat gasoline ethers imported into this state for the purpose of being mixed or blended with gasoline prior to sale to the public. The fee shall be paid monthly by such person to the department of safety and deposited by the department of safety into the gasoline remediation and elimination of ethers fund. Imposition of the fee shall be based on the records of the person and certified as accurate to the department of safety.

II. Every distributor who imports or causes to be imported neat gasoline ethers into the state shall file a monthly report for the preceding month and shall include all fees due for that reporting period with the department of safety on or before the twentieth day of the following calendar month. Failure to file by the required date or to enclose fees due shall result in the assessment of a 10 percent penalty to be added to the amount of fees due for that month. If no fees are due, a penalty of \$10 per day shall be assessed. Such penalty shall immediately accrue and thereafter the overdue fees and the penalty shall bear interest at the rate established by the Internal Revenue Service effective on the first business day of the calendar year. To this rate shall be added 2 percent. In determining the monthly rate, that figure shall be rounded off to the nearest quarter percent. The board may waive all or any portion of penalties or interest for good cause. Such cause and incident shall be recorded in the records of the gasoline remediation and elimination of ethers fund.

III. No distributor licensed under this section shall import neat gasoline ethers into this state without paying the fee required by this section.

IV. Unless otherwise provided, any distributor who violates any provision of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

Source. 2001, 293:10, eff. July 1, 2001.

<u>146-G:8</u> Administrative Costs. Notwithstanding any other provision of law, if the expenditure of additional funds is necessary for the costs of administration of the collection process established in RSA 146-D:3 and RSA 146-G:7 for funding the gasoline remediation and elimination of ethers fund, the commissioner of safety, with the prior approval of the governor and council, may draw upon the gasoline remediation and elimination of ethers fund for such purposes.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:9 Reporting by the Oil Disbursement Board. The board shall file annual reports of the status of the gasoline remediation and elimination of ethers fund no later than October 1, to the speaker of the house, the president of the senate and the state library. The first such report shall be submitted no later than October 1, 2002. The board shall also file interim reports on the activities of the gasoline remediation and elimination of ethers fund, including expenditures and reimbursements, and enforcement and remediation activities under RSA 146-G, by October 1, 2005 and by October 1, 2008 to the senate president, the speaker of the house of

representatives, the senate clerk, the house clerk, the house and senate committees having jurisdiction over water quality policy, the governor, and the state library. The board shall file a final report on the activities of the fund and enforcement and remediation activities by October 1, 2009 to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the house and senate committees having jurisdiction over water quality policy, the governor, and the state library.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:10 Review and Report. Upon issuance of the interim report by the board required by RSA 146-G:9, the members of house and senate committees having jurisdiction over water quality policy shall constitute a joint committee for purposes of reviewing the effectiveness of the program implemented by this chapter. The joint committee shall review the effectiveness of the program implemented by this act, and shall report the joint committee's findings and recommendations to the full senate and house.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:11 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A, relative to the allocation of funds from the gasoline remediation and elimination of ethers fund authorized under this chapter. Construction costs due to contamination from gasoline ethers incurred by operators of public water supplies between May 4, 2000 and the effective date of board rules shall be considered for compensation on a case-by-case basis.

Source. 2001, 293:10, eff. July 1, 2001.

146-G:12 Elimination of Gasoline Ethers and TBA From Gasoline Supplies. No person, as defined in RSA 146-A:2, VI, shall sell, deliver for sale, import, or cause to be imported into the state for sale any neat gasoline ethers or gasoline containing MTBE, other gasoline ethers, or tertiary butyl alcohol (TBA) in quantities greater than 1/2 of one percent by volume. Nothing in this subdivision shall be interpreted to prohibit the transshipment of MTBE, other gasoline ethers, or TBA content fuel through the state for disposition outside of the state including storage coincident to such shipment.

Source. 2004, 175:4, eff. January 1, 2007

<u>146-G:13 Penalties.</u> Any person who violates RSA 146-G:12 shall be subject to administrative fines not to exceed \$2,000 for each violation issued by the department of environmental services and civil penalties not to exceed \$60,000 for each violation. Each day of a continuing violation shall constitute a separate violation. In addition to civil penalties, the attorney general may institute such legal or equitable action as he or she deems necessary, including an action for injunctive relief.

Source. 2004, 175:4, eff. July 1, 2001.

N.H. Petroleum Reimbursement Fund Program – Quick Reference Guide



Oil Fund Disbursement Board

Program Summary

State statutes RSA 146-D, RSA 146-E & RSA 146-F provide excess insurance coverage for corrective action & third-party damages due to contamination found at petroleum storage facilities. Coverage is available for ASTs and USTs storing gasoline, diesel, oil, fuel oil, motor oil, used motor oil & on-premise-use fuel oil (including residential properties).

State statute RSA 146-G provides funding for gasoline ether corrective action and contamination monitoring – typically "MtBE".

The program is administered under N.H. Admin. Rules Odb 400. Reimbursement is available for incurred (i.e., invoiced) costs; proof of payment is not required.

Key Provisions of Statutes, Rules & Policies

NHDES determines who is responsible for petroleum and gasoline ether contamination cleanup, and who is fund-eligible. Qualifying facilities include those that are currently in use, & those that are permanently out-of-service. Facilities must be in operational compliance.

Qualifying persons include current & former petroleum storage facility owners and certain property owners, gasoline ether contamination source property owners, and public or private water supply owners.

Coverage is transferable.

Direct payment to consultants & contractors is available, as an "applicant".

Deductibles & reimbursable cost criteria apply.

Web-based reimbursement request submittal is available and preferred.

"Corrective action" means activities performed in accordance with state statute or administrative rules to contain a petroleum discharge, or to remedy contamination. "Third-party damages" are a monetary obligation of a fund-eligible party based on a court-approved settlement or judgment in a civil action. Contamination monitoring and consumer notification is required under state statute and administrative rules, when MtBE is found in a public water supply.

Work Scope & Budget Approval

All corrective action work must be pre-approved by NHDES for scope & budget. Pre-approval is not required, for public water supply monitoring and consumer notification.

Forms are available for a fund-eligible party to submit proposed work scope budgets and work scope change orders.

Quick-form approval is available for on-premise-use fuel oil facilities.

Reimbursable Costs

Costs for NHDES-required corrective action, public water supply monitoring, and consumer notification are reimbursable.

Discharge discovery costs & facility compliance costs are not reimbursable.

"Unit-Based" & "Project-Based" Costs must conform to those published by the Oil Fund Disbursement Board.

Certain reimbursable cost restrictions apply.

Securing Program Assistance & Submitting Reimbursement Requests

Responsibilities of Owners & Applicants:

Achieve & maintain facility operational compliance.

Determine the limits of private insurance coverage.

Report discharges and hire a consultant or contractor.

Follow guidance in the Manual for submitting work scopes and reimbursement requests.

Allow periodic financial audits.

<u>Ten Common Issues That Delay Reimbursement</u> <u>Request Approval</u>

- A facility is not in operational compliance.
- The work was not required by NHDES or was not approved for scope & budget.
- For an initial request, the "Request For Reimbursement Authorization" form was not provided or the form is not signed (original signature needed).
- 4. For an initial request, private insurance coverage information was not provided or is not complete A notarized statement is required for un-insured properties.
- Prime contractor, or applicant, invoices were not directed to the facility owner or eligible property owner.
- Subcontractor invoices were not included when required.
- 7. A written contract with "Waiver of Claims Provision" was not included with an applicant request.
- Corrective action reports or related documentation were not included, are not complete, or the corrective action work was not satisfactory.
- Corrective action costs are: not reconciled against the approved budget; costs are lump-sum; costs are inexcess of published Unit-Based Costs, Project-Based Costs, and/or an approved budget; or non-reimbursable costs are included.
- 10. Waivers are needed.



N.H. Petroleum Reimbursement Fund Program – Overview of "Facility" Requirements

Dil Fund Disbursement Board

Storage Facility Type	NHDES Project Type	Applicable Fund	Compliance Requirements	Deductible Schedules		Funding Limits
				Discharge After 7/1/95	Discharge Before 7/1/95	Fullding Limits
USTs storing gasoline, diesel, or oil. USTs storing fuel oil, motor oil or used motor oil - prior to 1/1/95	"LUST"	Oil Discharge & Disposal Cleanup Fund (RSA 146-D)	AST & UST facilities must be registered, and owners must achieve and maintain operational compliance	1 to 3 facilities owned; \$5,000 per discharge	1 facility owned; \$5,000 per discharge	\$1,500,000 Costs incurred after 7/1/88, or
ASTs storing less than 1,100,000 gallons of gasoline, diesel, or fuel oil for on-premise-use heating	"LAST" (gasoline/diesel)			4 to 9 facilities owned; \$10,000 per discharge		date of discharge
	"FUEL" (fuel oil)	Fuel Oil Discharge Cleanup Fund (RSA 146-E)		10 to 19 facilities owned; \$20,000 per discharge	2 to 19 facilities owned; \$20,000 per discharge	\$500,000 Costs incurred after 10/1/92, or date of discharge
ASTs or USTs storing motor oil or used motor oil	"MOST"	Motor Oil Discharge Cleanup Fund (RSA 146-F)	Facility registration may be required, and owners must achieve and maintain operational compliance	20 or more owned; \$30,000 per discharge	20 or more owned; \$30,000 per discharge	\$500,000 Costs incurred after 7/1/95, or date of discharge
ASTs or USTs storing fuel oil for on-premise-use heating, including residential properties	"OPUF"	Fuel Oil Discharge Cleanup Fund (RSA 146-E)	Facility registration may be required, and owners must achieve and maintain operational compliance. All facilities must be in compliance by July 1, 2010	\$100 for each discharge after 7/1/97		\$500,000 Costs incurred after 10/1/92, or date of discharge
Gasoline-ether source properties. Gasoline stored in regulated containers or otherwise handled or managed	"ETHER"	Gasoline Ether Fund (RSA 146-G)	Owners must achieve and maintain operational compliance, or have an approved compliance schedule	None		Costs incurred after 1/28/02, or as provided by statute



N.H. Petroleum Reimbursement Fund Program – Paper, Or Web-Based, Reimbursement Request Submittal Checklist

- A completed Request For Reimbursement Authorization form found in the Manual. The form is needed for the first reimbursement request submitted by a facility owner or eligible property owner. If fund eligibility is transferred, a form is needed for the first request from the new owner.
- A Cover Letter. (See example in the Manual.)
- A summary (listing) of invoiced expenses or web-based service cost summary.
- □ A copy of the Work Scope Approval, Change Order Approval, or NHDES corrective action request letter applicable to the request. Contractor daily work logs may be needed for "emergency services".
- Copies of invoices from all contractors, and sub-contractors for time and materials requests, or tabulation of bid item quantities, and/or web-based service cost summary. Invoices must be directed to the facility owner or eligible property owner, including a request submitted by an applicant. Invoices cannot be directed to NHDES.
- A copy of the services contract between the facility owner or eligible property owner and the applicant, if applicable.

- Employee wage, benefits, and equipment operating cost data for corrective action performed by a facility owner or eligible property owner.
- Complete information on payment(s) received from private insurance, including a statement explaining the coverage limits, a letter denying coverage, or a notarized statement for un-insured properties.
- A copy of the legal agreement stating a former facility owner is obligated to perform corrective action after ownership transfer.
- □ A request for co-payment to the owner and service provider, if applicable.

NOTE: For web-based reimbursement submittals, documents may be attached as PDF files if required.



N.H. Petroleum Reimbursement Fund Program – Ten Common Issues That Delay Reimbursement Request Approval

- 1. A Facility Is Not In Operational Compliance.
- 2. The Work Was Not Required By NHDES Or Was Not Approved For Scope And Budget.
- 3. For An Initial Request The "Request For Reimbursement Authorization" Form Was Not Provided Or The Form Is Not Signed (Original Signature Needed).
- 4. For An Initial Request Private Insurance Coverage Information Was Not Provided Or Is Not Complete. A Notarized Statement Is Required For Un-Insured Properties.
- 5. Prime Contractor, Or Applicant, Invoices Were Not Directed To The Facility Owner Or Eligible Property Owner.
- 6. Subcontractor Invoices Were Not Included When Required.
- 7. A Written Contract, With 'A Waiver Of Claims Provision', Was Not Included With An Applicant Request.
- 8. Corrective Action Reports Or Related Documentation Were Not Provided, Are Not Complete, Or The Corrective Action Work Was Not Satisfactory.
- 9. Corrective Action Costs Are: Not Reconciled Against The Approved Budget; Costs Are Lump-Sum; Costs Are In-Excess Of Published Unit-Based Costs, Project-Based Costs, And/Or An Approved Budget; Or Non-Reimbursable Costs Are Included.
- 10. Waivers Are Needed.



Oil Fund Disbursement Board

N.H. Petroleum Reimbursement Fund Program – Information Resources

Facility Compliance, Reimbursement & Remediation Program Information Contacts

UST facilities: Thomas Beaulieu at (603) 271-2986. tbeaulieu@des.state.nh.us.

AST and On-Premise-Use heating oil facilities: Michael Juranty, P.E., at (603) 271-6058. mjuranty@des.state.nh.us

Motor Vehicle Salvage Yard facilities: Pamela Hoyt-Denison, P.E., at (603) 271-2938. phoyt-denison@des.state.nh.us.

Potential Contaminant Source facilities/Best Management Practices: Diana Morgan, P.G. at (603) 271-2947. WSEBInfo@des.state.nh.us

Remediation implementation work scopes, including contaminated soil excavation and disposal: Robin Mongeon, P.E., at (603) 271-7378. rmongeon@des.state.nh.us

Various corrective action report and investigation work scope approval: Mark Ledgard, P.G., at (603) 271-7376. mledgard@des.state.nh.us

Fund program eligibility and reimbursement request approval: Joyce P. Bledsoe, P.G., at (603) 271-8740 jbledsoe@des.state.nh.us

Reimbursement Program & Oil Fund Disbursement Board Information

Timothy R. Denison, Supervisor Fund Management Section (603) 271-2570 tdenison@des.state.nh.us

Remediation Program

Gary Lynn, P.E., Supervisor Petroleum Remediation Section (603) 271-8873 glynn@des.state.nh.us

Oil Facility Compliance Program

Supervisor
Oil Compliance Section
(603) 271-1165

Public & Private Water Supplies

Talcott Hubbard, P.E. Fund Management Section (603) 271-2014 thubbard@des.state.nh.us.

Spill Response Program

Richard Berry, Supervisor Spill Response & Complaint Investigation Section (603) 271-3440 rberry@des.state.nh.us.

Work Scope & Reimbursement Submittals Should Be Forwarded To:

Joyce P. Bledsoe, P.G., Fund Manager Oil Remediation and Compliance Bureau 29 Hazen Dr., P.O. Box 95 Concord, NH 03302-0095

Oil Remediation Program Website: www.des.state.nh.us/orcb_hwrb.htm